

## **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

FEB 15 1991

THOMAS L. COVER, CLERK  
BY                     

CLINTON W. HAMMOCK, et al.,

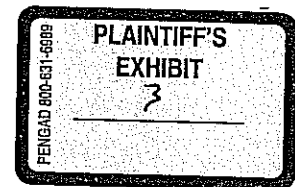
Plaintiffs,

vs.

CV-87-680-E

THE CITY OF AUBURN, et al.,

Defendants.



ORDER APPROVING SETTLEMENT AGREEMENT

On this the 1st day of February, 1991, at 9:00 A.M., the day and date set for the Fairness Hearing on the proposed Settlement Agreement in the above case, the parties appeared in Open Court. Several written objections to the Settlement Agreement had been filed, which the Court considered. The attorneys for the parties, namely Arnold W. Umbach, Jr., attorney for the City of Auburn; Hon. Stephen R. Glassroth, attorney for the past and present white firefighters, Hon. Deborah H. Biggers, attorney for the past, present and future black firefighters, and Hon. Dudley Perry, Jr., attorney for the white future firefighters, appeared in Court and represented to this Court that the proposed Settlement Agreement represented a compromise by all parties and all attorneys recommended the Settlement Agreement to the Court on behalf of their clients. The Court gave an opportunity to all class members present to express any opinions which they might have regarding the

EOD 2-15-91

proposed Settlement Agreement and no member of the class spoke. The Court is therefore of the opinion that the proposed Settlement Agreement should be approved and it is

ORDERED, as follows:

1. That the Settlement Agreement dated November, 1990, submitted to this Court is hereby approved and all parties are hereby directed to implement the terms and conditions of said Notice of Proposed Class Settlement.

2. That the matters involving the attorneys' fee for Perry & Perry is reserved for future decision by this Court.

3. That a copy of this Order be mailed postage prepaid or hand-delivered by the Clerk of this Court to the following:

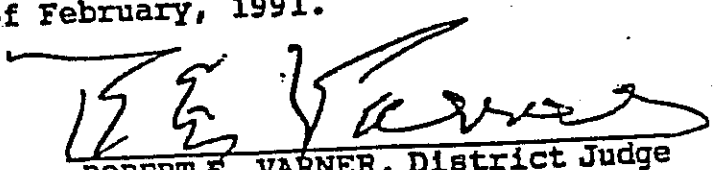
Arnold W. Umbach, Jr.  
Walker, Hill, Adams,  
Umbach, Meadows & Walton  
Attorneys for the City of Auburn  
P. O. Box 2069  
Opelika, AL 36803-2069

Hon. Stephen R. Glassroth  
P. O. Box 910  
Montgomery, AL 36102

Hon. Deborah H. Biggers  
P. O. Box 1258  
Tuskegee, AL 36083

Hon. Dudley Perry, Jr.  
111 Washington Avenue  
Montgomery, AL 36104

ENTERED this 15th day of February, 1991.

  
ROBERT E. VARNER, District Judge

FILED

NOV 14 1990

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

THOMAS C. CAYE  
CLERK

CLINTON W. HAMMOCK, et al.,                     )  
  )  
  )  
  )  
vs.    )  
  )  
THE CITY OF AUBURN, et al.,                    )  
  )  
  )  
  )  
  )  
  )  
Defendants.    )

CV-87-680-E

NOTICE OF PROPOSED CLASS SETTLEMENT

TO: Former, Present, and Future Employees of  
the City of Auburn Fire Department who  
are members of the Plaintiff Class in  
Civil Action No. 87-V-680-E

A lawsuit pending in this Court, Civil Action No.  
87-V-680-E involving a claim by Clinton W. Hammock and others  
against the City of Auburn, Jan M. Dempsey, Mayor of the City of  
Auburn; Tejeda, Personnel Manager for the City of Auburn; the  
City Council of the City of Auburn, Robert Gastaldo, Samuel  
Harris, Mary Fortenberry, Sam Teague, Lamar Sellers, Frances W.  
Hale, W. G. "Trey" Johnston, and Bill Ham, Jr., was settled  
pursuant to a Notice of Proposed Class Settlement, which, if you  
are a member of the class, you should have received on or about  
August 22, 1988. Since the settlement of this class action  
suit, several issues have been brought before this Court  
concerning the enforcement of the provisions of the settlement  
decree. Currently pending before this Court are Objections of

EXHIBIT C



Dexter Card and William Felton To Proposed Settlement of Class Action, Objections of Members of Subclass of Past, Present, and Future Black Firemen, and Response of the Class Consisting of Present and Future Auburn Firefighters to the Order to Show Cause of February 16, 1990, all filed by class counsel.

The purpose of this notice is to advise you of the status of proposed settlement of all issues involved.

Subject to the approval of the Court the Plaintiffs and the Defendants have agreed on a settlement of the issues. The terms of agreement are in the Memorandum of Understanding which states:

MEMORANDUM OF UNDERSTANDING

1. STUDENT FIREFIGHTERS. Within thirty days the City will issue a statement restating in substance those matters set forth in the plan submitted on February 3, 1989, (the Plan) to the U. S. District Court in this case and indicating, among other things, the following:

A. That the Student Firefighters are not Regular Firefighters. "Regular Firefighters" includes all permanent full-time Firefighters except Student Firefighters.

B. The Student Firefighters and their leaders are all under the direct supervision and control of the Fire Chief and the officers of the fire department. Student Firefighters have

no control or authority over any Regular Firefighters at any time.

C. The Student Firefighters do not automatically become Regular Firefighters but may, of course, apply for the position of a Regular Firefighter in the event such position becomes available. The Student Firefighters are not eligible for any promotions within the fire department except for the promotion to student positions within the Student Firefighters section.

D. The Student Firefighters may be used as deemed appropriate by the City. When the Career Firefighters arrive, the Senior Career Fire Officer or his designee shall assume command immediately upon their arrival. All Student Firefighters and Career Firefighters shall work together to carry out the directions and instructions of the Senior Career Fire Officer or his designee. In the event that a third firestation is built by the City, the City may make a determination to use Student Firefighters to man the third firestation.

E. No parties challenge the selection process of student team leaders. ~~In addition all parties agree that the City's~~ obligation to hire black Firefighters does not apply to Student Firefighters and the City may hire Student Firefighters without regards to said Order but may not, of course, discriminate in its hiring practices based upon race.

2. KENNETH RIDLEY AND THOMAS SCOTT. Within thirty days from the approval of this settlement, the City shall pay both Mr. Ridley and Mr. Scott from November 17, 1988, until the date of their re-hiring by the City of Auburn. Said sum shall be treated as compensation with the appropriate withholding and deductions. In addition, if the City has not reinstated Mr. Ridley and Mr. Scott at their previous seniority level, including their prior grade and step, with the same accumulated vacation days and sick leave days as of the date of their last employment with the City prior to 1989, the City shall do so within 30 days of the approval of this settlement and shall issue a written statement to be placed in their personnel file, stating that the seniority, vacation days and sick leave has been so reinstated. *just the*

3. CAFETERIA PLAN. Within thirty days, the City will obtain from the Administrator of the City's Cafeteria Plan a statement indicating all reserves, including cash reserves and other reserves, available to any Firefighter, and a complete accounting of the disposition or transfer of any such cash reserves. Further, the City will joint with Plaintiffs to assist the Firefighter in obtaining all benefits to which they are entitled under the Cafeteria Plan, and under all insurance policies within such Cafeteria plan, and under all insurance policies within such cafeteria plan to which the Plaintiffs have

made payments, and to be sure that the Cafeteria Plan has been administered in accordance with applicable regulations.

4. BILL FELTON. In addition to the above matters pertaining to the City's Cafeteria Plan, within thirty days, the City will furnish to Mr. Felton a statement of his plan and determine whether inappropriate deductions have been made from his paycheck and whether certain benefits are due. If it is determined that benefits are due to him or that inappropriate deductions have been made the City will cooperate to require the insurance company to fulfill its obligations.

5. CAREER PLAN. Within thirty days from the approval of this settlement, the City will modify the Career Plan currently submitted to the Court in this matter so that all deadlines set forth therein are extended for one year past the previous deadlines set forth in said Career Plan. In addition, no Firefighters shall be required to sit for nor pass the Firefighter II examination given by the State of Alabama. All Firefighters must, however, complete all training for the Firefighter II certification as given by the City of Auburn and pass all practical tests and examinations given by the City, whether written or oral which relate to said training. So long as each Firefighter is making a good faith effort to successfully complete the tests and examinations, each Firefighter shall be allowed the opportunity to take such tests and examinations as many times as may reasonably be required in

order to pass. All Firefighters, even those who do not pass the State Firefighter II certification, will be required to take additional training as required by the Career Plan, with said training to include but not be limited to Fire Apparatus Operator training. The exemption to the requirement for the Firefighter II certification shall apply to Chris Turner referred to in Paragraph 11 below, but shall not apply to any Fire Officer, present or future, nor to any Firefighter hired after the date of this Agreement. In addition, all Firefighters understand and acknowledge that the failure to obtain the Firefighter II certification probably will affect future raises, promotions and job tasks.

City shall have the right to delete courses and requirements from the Career Plan if in the judgment of the City such requirements are no longer needed or required. City shall also have the right to amend the Career Plan to reflect future state or federal requirements and change in the mission of the Fire Division.

- All other matters set forth in said Career Plan shall be approved by all parties and can immediately be implemented by the City.

The City shall amend the job descriptions in the Career Development Plan if necessary, so that said job descriptions correctly reflect the actual job tasks performed by each position with the Fire Division of the Department of Public

Safety of the City and are consistent with the current job descriptions for each position in the Fire Division of the Department of Public Safety of the City.

Upon approval of this Settlement Agreement by the Court and the Class, the Career Plan will be amended to be consistent with the changes set forth herein.

6. **PHYSICAL FITNESS PLAN.** The City shall modify the Physical Fitness Plan currently submitted to the Court so that by adopting Section 2-3.1 of the Physical Fitness Plan required by the National Fire Protection Association, NFPA 1001 Firefighter Professional Qualifications, 1987 Edition, so that the criterion reference norms set forth in the Physical Fitness Plan shall be as follows:

CRITERION REFERENCE NORMS

<u>Field Test</u>	<u>Males</u>	<u>Females</u>
Percent Body Fat	max 19%-25% age related	max 23%-29% age related
Sit ups	min 30	min 30
Sit and Reach	min 23 cm	min 23 cm
Step test	Good level based on age (See Table B.4)	Good level based on age (See Table B.5)

Each Firefighter shall complete one of the following:

	Males	Females
1 1/2 mile run	under 30 13:00 min 30-39 13:00 min 40-49 14:00 min over 50 14:30 min	under 30 13:00 min 30-39 13:00 min 40-49 14:00 min over 50 14:30 min
Walk 3 miles	38 min	38 min
Bicycle 4 miles	12 min	12 min
Swim 500 yards	8 min 20 seconds	8 min 20 seconds
Run in Place 75 steps per minute	15 min	15 min
Run on a motorized hori- zontal tread- mill 10 miles per hour	6 min	6 min

The Physical Fitness Plan currently submitted to this Court with the above modifications shall be approved and the City may immediately implement said Plan.

7. WELDON AND FORTNER. The City will in good faith attempt to convince the Retirement Systems of the State of Alabama to accept its contributions on behalf of Mr. Weldon and Mr. Fortner in accordance with the previous order of this Court. It is the understanding of the parties that such attempt, if necessary, will include litigation on behalf of Mr. Weldon and Mr. Fortner. The City shall proceed in good faith to promptly obtain such ruling.

8. SICK LEAVE. The City represents that it has included in the Sick Leave Plan submitted to the Court in this matter a statement indicating that co-employees will not check on other employees regarding sick leave. If requested, the City will issue a further statement to this affect.

9. WALTER ALLEN. Within thirty days, the City will grant Mr. Allen two vacation days in exchange for two sick leave days.

10. MINIMUM PERMANENT FIREFIGHTER STAFFING. For a period of seven years from October 1, 1990, the City shall maintain 33 permanent Firefighters which 33 permanent Firefighters shall include the Fire Chief, Deputy Chiefs, Captains, Lieutenants, Student Team Leaders and Firefighters. In addition, the City agrees to maintain within said minimum number of 33 Permanent Firefighters, six Captains and six Lieutenants. The City may, in its sole discretion and with the consent of the Fire Officer, use the Fire Officers (Lieutenants



and Captains) as student team leaders without having to replace the Fire Officers. This commitment by the City shall expire on October 1, 1997.

11. BLACK FIREFIGHTERS. Upon the execution of this Agreement, the City agrees to hire Chris Turner as a Probational Firefighter for a period of one year, and if Chris Turner completes all of the requirements for a Permanent Firefighter, which shall include the 240 hours of training required by the State of Alabama, passing the required physical examination by Dr. Jimmy Mathews and satisfactorily complying with all of the rules and regulations of the Fire Division during the one-year period, he may become a Permanent Firefighter within the one-year period. In such event the City shall retain Chris Turner as a Permanent Firefighter, subject to the rules and regulations of the Fire Division of the Public Safety Department of the City including all provisions of the Career Plan. Mr. Turner shall not be required to sit for nor pass the Firefighter II examination given by the State of Alabama. He must, however, complete all training for the Firefighter II certification as given by the City of Auburn and pass all practical tests and examinations given by the City, whether written or oral, which relate to said training. If Mr. Turner does not complete all of the requirements to become a Permanent Firefighter within the one-year period, the City shall not be obligated to retain him. In addition, the City agrees that the next two Regular

Firefighters hired by the City shall be black Firefighters. These Firefighters shall be hired when the City next hires Regular Firefighters.

12. ASSESSMENT CENTER. The City has submitted to this Court an Assessment Center which shall be approved by the Court and implemented by the City for use in the promotion of Lieutenants and Captains with the Fire Division. Notwithstanding any language to the contrary contained in the City of Auburn Assessment Center Candidate Orientation Manual, all promotions subject to Assessment Center involvement shall be made by promoting the candidate rated Number 1 by the Assessment Center for each such promotion.

13. BILL FELTON AND JESSIE STRICKLAND. Immediately upon the execution of this Agreement, the City shall promote Bill Felton and Jessie Strickland to Lieutenant and shall pay to Bill Felton and Jessie Strickland within thirty days thereof, back pay at Grade 34, Step 10 from March 1, 1990, until the date of promotion by the City. The City shall not be required to promote any other individual to the rank of Lieutenant, whether ~~or not any individual has applied for the position of Lieutenant~~ prior to the date of this Agreement.

14. DAY. The day will be defined as follows: For Firefighters on a 56-hour work week, 10.6 hours per month will be earned for all employees hired after February 3, 1989. For full-time Firefighters who work a 56-hour week and were hired

prior to February 3, 1989, annual leave shall be earned based on one 24-hour shift per month. For all personnel of the Fire Division not on the 56-hour week, adjustments will be made accordingly.

15. RETALIATION PROHIBITED. The City shall not retaliate against any member of the class.

16. ENTIRE AGREEMENT. This Settlement Agreement expresses the entire agreement between the parties hereto, whether oral or written, and incorporates herein all other matters agreed upon by the parties in the settlement of this lawsuit.

#### General

1. The City shall be provided Full and Final Releases from all individuals adverse to the City in Clinton W. Hammock, et al. vs. City of Auburn, Civil Action No. CV-87-V-680, specifically releasing the City and all individuals it so chooses of any and all liability or obligations of any kind in connection with the events which are the basis of said lawsuit. This lawsuit shall then be dismissed with prejudice and the Plaintiffs shall bear their own costs.

2. ATTORNEY'S FEES. The matter involving any attorney fees due to Perry & Perry is reserved by the Court for final decision after hearing evidence thereon. The City shall pay to

Deboran Hill Biggers the sum of \$15,000.00 and shall pay to the law firm of Kendrick and Glassroth the sum of \$10,000.00.

#### SETTLEMENT HEARING

The Court will hold a hearing in the United States District Courthouse in Montgomery, Alabama, on February 1, 1991, at 9:00 A.M., to determine whether, as recommended by both class counsel, it should approve the proposed settlement.

Objections to the proposed settlement by class members will be considered by the Court but only if such objections are filed in writing with the Court on or before January 15, 1991. Attendance at the hearing is not necessary; however, class members wishing to be heard orally in opposition to the proposed settlement should indicate in their written objection their intention to appear at the hearing.

Class members who support the proposed settlement do not need to appear at the hearing or take any other action to indicate their approval.

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#### FURTHER PROCEEDINGS

If the settlement is approved by the Court, the entire Memorandum of Understanding will be put into effect and the entire amount of damages, including fees, costs and expenses,

will be paid to the Clerk of this Court, who will make distribution in accord with the terms of the Memorandum of Understanding.

If settlement is not approved, the motions and other matters will be prepared for judicial resolution of the claims and defenses concerning this Courts prior order and the other matters.

ADDITIONAL INFORMATION

Any questions you have about the matters in this notice should not be directed to the Court, but may be directed by telephone or letter to:

Deborah Hill Biggers  
113 East Northside  
Tuskegee, AL 36083

Stephen R. Glassroth  
Kendrick and Glassroth  
505 South Perry Street  
P. O. Box 910  
Montgomery, AL 36101-0910

or

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Robert T. Meadows, III or  
Arnold W. Umbach, Jr.,  
Attorneys for the Defendant, the City of  
Auburn, Mayor Jan Dempsey, Douglas Watson,  
Ron Tejada, and the Members of the City  
Council of the City of Auburn  
Walker, Hill, Adams, Umbach & Meadows  
P. O. Box 2069  
Opelika, AL 36803-2069  
Telephone: (205) 745-6466

You may, of course, seek the advice and guidance of your own attorney if you desire. The pleadings and other records in this litigation, including a complete copy of the proposed settlement agreement, may be examined and copied at any time during regular office hours at the office of the Clerk, Federal Courthouse, Montgomery, Alabama.

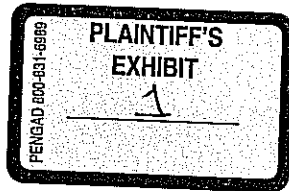
REMINDER AS TO TIME LIMITS

If you wish to object to the proposed settlement, file your written objections with the Clerk of the Court on or before January 15, 1991. Include any request to be heard orally at the hearing.

DATED: February 14, 1990

  
THOMAS C. CAVER, Clerk  
United States District Court for  
the Middle District of Alabama  
P. O. Box 711  
Montgomery, AL 36101

## **EXHIBIT B**



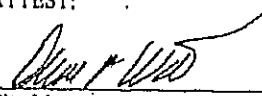
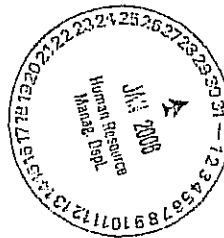
RESOLUTION NO. 05-288

BE IT RESOLVED by the City Council of the City of Auburn, Alabama, that the City Manager is authorized to execute the attached contract with CWH Research, Inc. for the development and administration of a promotion selection process for the position of Fire Battalion Chief.

ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this 20th day of December, 2005.

  
Mayor

ATTEST:

  
City Manager

EXHIBIT

  
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LETTER OF AGREEMENT

THIS AGREEMENT is made this 21st day of December, 2005 between the City of Auburn, Alabama (hereinafter called "the Client") and CWH Research, Inc., (hereinafter called "CWH") a Colorado Corporation, whose business address is 9085 E. Mineral Circle, Suite 350, Englewood, CO 80112.

- 1) The Contract. This document is a complete agreement.
- 2) Definitions. When used in this Agreement, the following words and phrases shall have the indicated meanings:
  - a) candidate - an individual who appears at the testing site and begins the written test.
  - b) written test - a written measuring instrument and accompanying answer sheets, which may or may not be combined with other instruments into a single battery.
  - c) qualified administrator - an individual who has had previous experience in written test administration, has been apprised of the confidential nature of the tests, the importance of fair and impartial testing, and the importance of maintaining strict test security. Further, this individual shall have read the CWH general instructions for written test administrations, and shall have been approved by CWH.
  - d) written test session - the period from commencement of the first test in a CWH promotional test battery to the last test in that battery, occurring on the testing date (s) agreed upon by CWH and client.
  - e) assessment center - exercises or simulations designed to measure candidates' knowledge, skills, and abilities, as well as the scoring of those candidates' performance on each of the exercises and simulations.
  - f) assessor - an individual who has been trained in the use of assessment centers and the evaluation of candidates' performances in assessment centers. Further, the assessor or assessors shall have been apprised of the confidential nature of the assessment center exercises, the importance of fair and impartial evaluations, and the importance of maintaining strict security over all elements of the assessment center.
  - g) assessment center test session - the period from commencement of the first set of assessment center exercises to the last exercise and final evaluation of candidates, occurring on the testing date (s) agreed upon by CWH and the Client.
  - h) oral board - series of structured interview questions designed to measure candidates' knowledge, skills, and abilities, as well as the scoring of those candidates' performance on each of the questions.
  - i) oral board test session - the period from commencement of the first oral board question to the last question and final evaluation of candidates, occurring on the testing date (s) agreed upon by CWH and the Client.
- 3) Services to be Performed by CWH. CWH is an independent contractor and is not an agent, servant, employee or partner of the Client, and nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating a relationship of principal and agent or partnership or joint venture between the parties. CWH shall perform services for the Client in the categories listed below (collectively, the "Services"). These categories, and some, but not necessarily all, of the major services to be performed for the Fire Battalion Chief position as follows:
  - a) Job Analysis Review
    - (1) Job analysis review includes conducting interviews to develop test instruments and to provide a content valid process.

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303-617-3433

- b) Written Test Development
  - (1) Developing and validating a semi-customized written exam composed of 70 to 80 traditional job knowledge written items and 20 to 30 situational judgment items. Includes recommendations as to the format of the questions and answers, the number of questions to be included and the study sources. Includes up to 30 custom test items designed specifically for the client.
  - (2) Provide master copy of the exam, the delivery of the exam and answer sheets, scoring of the exam, and handling appeals.
- c) Test Scoring
  - (1) Score tests.
  - (2) Conduct relevant statistical analysis.
  - (3) Consult with the Client regarding the format and structure of the final eligibility lists.
  - (4) Provide results in written format within two weeks after completion of the exams.
  - (5) Handle test challenges or concerns.
- d) Assessment Center
  - (1) Develop one set of exercises for each position, selecting three of the following for each position: In-basket, Oral Resume, Oral Presentation, Written Exercise, Role-Play or Emergency / Tactical Scenario.
  - (2) Provide candidate orientations, conduct rater training, conduct training for Client staff as required or needed.
  - (3) Provide assessor training.
  - (4) Administer process to up to 12 candidates (one day of testing).
  - (5) Score.
- e) Feedback
  - (1) Provide written feedback letters to candidates.
  - (2) Provide process summary to Client.
- f) Validity. CWH shall conduct a content validation process for the test(s). This validation will meet and adhere to the following standards and guidelines:
  - (1) Federal EEOC Uniform Guidelines on Employment Selection Procedures.
  - (2) Principals for the Validation and use of Personnel Selection Procedures.
  - (3) Standards and Ethical Considerations for Assessment Center Operations.
  - (4) Standards for Education and Psychological Tests.

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- 4) Payment for Services. In consideration of the Services of CWH, the Client shall pay CWH the total sum shown below for services. Travel expenses will be billed at additional cost.

Breakdown for services is as follows:

Service	Cost
Job Analysis Review	Included
Semi-Customized Written Test	
Technical Job Knowledge Component	\$2,500.00
Situational Judgment Component	\$4,500.00
Assessment Center	\$10,000.00
<b>TOTAL (excluding options and expenses)</b>	<b>\$17,000.00</b>
<b>OPTIONS:</b>	
Written Feedback Letters (\$125 per candidate -- assumes 10 candidates)	\$1,250.00
Additional days of assessment center administration	\$800 per day
"Hot Seat" exercise	Not included
CWH obtaining assessors	Not included

Payment to be made as follows (excludes options and expenses):

25% upon initiation of contract	\$4,250.00
25% upon completion of SME test development meeting	\$4,250.00
25% upon completion of written test	\$4,250.00
25% upon completion of assessment center	\$4,250.00

Options will be billed with the final invoice following completion of the assessment center.

All travel and additional expenses will be billed at cost as incurred or at the below standard rates. These expenses will include the following categories and rates:

Airfare	Economy class, with first class upgrades paid for by CWH mileage points. Cost varies by area -- every attempt will be made to minimize cost. Billed at cost.
Hotel charges	Mid priced hotel, such as Marriot, Hilton, etc. We use government rates and discounts when possible. Cost varies by area -- every attempt will be made to minimize cost. Billed at cost.
Per Diem	\$45 per day, or \$15 per meal.
Mileage to/from airport and to/from client site	\$0.42 cents per mile, plus applicable tolls.
Rental car	Mid size car. Varies by area -- every attempt will be made to minimize cost. Billed at cost.
Shipping	US Postal service or FED EX is generally used, depending upon requirements. 2 day shipping is generally used, unless overnight is required.

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This price includes the complete and satisfactory performance of the Services specified in this Agreement. Optional components may be selected by client for additional charges noted.

If any additional work is required beyond what this contract states, Dr. Hornick will provide his assistance at the rate of \$250 per hour. Any additional work provided by other personnel in CWH will be charged at the rate of \$175 per hour for Managing Consultants, \$125 per hour for Consultants, and \$50 per hour for clerical.

Expert Testimony. CWH shall provide expert testimony concerning any aspect of its work related to this contract and/or the resultant defense of all related products. This testimony and any necessary preparation will be performed at the hourly rate mentioned above, plus any travel or other related expenses which are incurred.

- 5) Client Responsibilities. In addition to paying CWH for services according to the preceding paragraph, the Client shall have the following responsibilities:
- a) The Client shall provide for the written test and assessment center appropriate testing site(s) and materials, including rooms and furniture conducive to the taking of tests. In addition, all necessary supplies needed by candidates, assessors, and proctors during the written test and assessment center shall also be provided by Client.
  - b) The Client shall make arrangements for qualified written test and assessment center administrators and proctors. The qualified administrators must be approved by CWH.
  - c) The Client shall make all notifications to those people who are eligible to take the test. These notifications include, by way of explanation, but not by way of limitation: testing dates, testing times, and testing places. Further, Client shall make all reasonable attempts to provide for notifications, testing opportunities, and similar concerns to all candidates in a fair and impartial manner.
  - d) The Client shall supply sufficient numbers of assessors and role players to conduct the assessment centers, based on criteria established by CWH. Should these assessors or role players require payment for their time or expenses, the Client agrees to assume full responsibility for these costs.
  - e) CWH will retain the copyrights to all materials developed in the performance of this contract. CWH will, however, grant the Client a non-exclusive, royalty free license to use the selection procedures that will be developed for the duration of this contract. Client shall not reveal the contents of the tests to anyone without the written consent of CWH. The Client assumes full responsibility and liability for any violation of this provision by its employees and/or agents to the extent such employees and/or agents were acting within the scope of their employment and or agency.
  - f) Client shall return all testing materials provided by CWH, to CWH.
- 6) Provisions of the Contract. The following provisions are made a part of this contract:
- a) Non-Discrimination. CWH certifies and represents that, during the performance of this Contract, Contractor and any other parties with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex or age. Contractor further certifies that it will not maintain any segregated facilities.
  - b) Applicable Law. Parties to this contract shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. This contract should be construed in accordance with the laws of the State of Alabama. If a dispute arises involving this agreement, and the parties are not able to amicably resolve such dispute, then the parties agree that all claims shall be brought in a Court of Competent jurisdiction located in Alabama.

**CWH Research, Inc.**

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- c) Interest of the Client. No elected official or any officer or employee of the Client shall have a financial interest, direct or indirect, in this contract.
  - d) Interest of CWH. CWH covenants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict with the performance of services required to be performed under this contract; they further covenant that in the performance of this contract, no person having any such conflict of interest shall be employed.
  - e) Maintenance of Records. All appropriate records related to the aforementioned projects will be maintained by CWH for the required statute of limitations.
  - f) Modification. This contract contains the entire Agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless mutually consented to in writing and signed by an authorized officer of the respective parties.
  - g) Assignment. CWH may not assign its rights under this Agreement without the express prior written consent of the Client, and such successor in interest may not assign its rights under this Agreement without the express prior written consent of the Client. The Client has the right to continue with the assignee or cancel the Agreement with a pro-rata refund.
  - h) Termination. ~~The Client may terminate this Agreement upon 30 days written notice without cause.~~ Upon delivery of said notice to CWH, CWH shall cease performing any work pursuant to this agreement and shall be entitled to retain that portion of the fee for services performed through and including the 30 days notice period prior to termination.
  - i) Insurance. CWH will be required to provide certificates of insurance showing that it carries, or has in force, automobile liability insurance, general liability insurance, professional liability insurance and workers' compensation insurance. Limits of liability for automobile liability insurance shall be, at a minimum, \$1,000,000.00 combined single limit. Limits of liability for general liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence, \$1,000,000.00 personal and advertising injury, \$1,000,000.00 general aggregate and \$1,000,000.00 products/completed operations aggregate. General liability insurance will include coverage for contractually assumed liability. Limits of liability for professional liability shall be, at a minimum, \$1,000,000.00 per occurrence or claim and \$3,000,000.00 aggregate. If professional liability coverage is on a claims-made basis, CWH will maintain coverage in force for a period of two (2) years following completion of the work specified in the agreement. Workers' compensation insurance shall provide statutory workers' compensation coverage and employers' liability coverage with limits of, at a minimum, \$500,000.00 each accident, \$500,000.00 disease- each employee and \$500,000.00 accident, \$500,000.00 disease - policy limit.
- The certificate of insurance shall provide the Client with thirty (30) days written notice of cancellation of any of the coverages named in said certificate.
- The Client will be named as additional insured under the CWH's general liability insurance and automobile insurance policies.
- CWH shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by the CWH. These certificates shall evidence waivers of subrogation in favor of CWH and the Client and shall be made available to the Client upon request.
- j) Indemnification. Each party shall generally be responsible for its own acts and will be responsible for all damages, costs, fees, and expenses, including attorney's fees and costs, which arise out of the performance of

**CWH Research, Inc.**

9085 E. Mineral Circle, Suite 350, Englewood, CO 80112  
303-617-3433

this agreement and which are due to that party's own negligence, carelessness, unskillfulness, and other unlawful conduct and/or the negligence, carelessness or unskillfulness or other unlawful conduct of its respective officers, agents and/or employees acting in their official capacities. Provided; however, Client shall defend, indemnify and hold CWH, its officers, agents and employees free and harmless from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with the negligence, tortious acts or other unlawful conduct of Client or its respective agents, officers and employees in the performance of this agreement. Provided however, that Client does not waive its defense of sovereign immunity or any other immunity or privilege afforded by law; nor does client waive official immunity available to any officer, employee, or agent acting by or on behalf of Client. In addition, CWH shall defend, indemnify, and hold Client, its officials, representatives, agents, servants and employees free and harmless from and against any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or other unlawful conduct of CWH or its respective agents, officers and employees in the performance of this agreement.

**AUTHORIZED REPRESENTATIVE**

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this contract and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

(i) **CLIENT:**

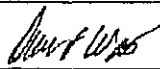
Steven A. Reeves

Human Resources Director

130 Tichenor Avenue

Auburn, AL 36830

By:



Name:

David F. Watkins

Title:

City Manager

(ii)

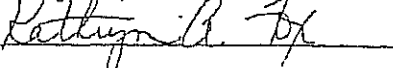
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Kathryn A. Fox, M.A.

9085 E. Mineral Circle

Suite 350

Englewood, Colorado 80112



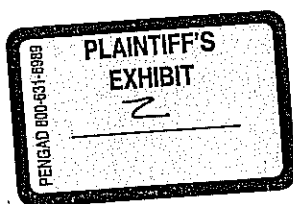
Kathryn A. Fox, Vice-President

EXECUTED this 21st day of December, 2005.

12/21/2005

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## **EXHIBIT C**



# **Auburn Fire Division Orientation Manual**

## **Promotional Written Test & Assessment Center Process**



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# Orientation Manual Overview

*This section gives you a brief explanation of the manual so that you can easily find the information that will be most helpful to you.*

---

## Introduction

The goal of this manual is to introduce you to the promotional process that will be used for the positions in your Department. Exposure to this material will give you, the candidate, an idea of what to expect and how to prepare for the promotional process. This manual will assist you during your preparation for the written examination and depending on how well you score on the exam, your advancement to the assessment center.

Each of the sections in the manual is briefly described below.

### ***Written Test***

This section of the orientation manual contains information to answer the following questions that are commonly asked about written examinations.

- What general steps should I take to prepare for the test?
- How should I review the reading material?
- How can I control test anxiety?
- What strategies should I use when actually taking the test?
- What is the test development process?
- What kinds of questions will be on the test?

### ***Assessment Center***

In this chapter, you will find answers to the following questions:

- What is an assessment center?
- Why are assessment centers used?
- How are assessment center exercises developed?
- What are the typical assessment center exercises?
- How is the assessment center process conducted?
- How should I prepare for an assessment center?
- How will the assessment center be scored?
- What feedback will I receive on my performance?
- How will I be evaluated during the assessment center?

### ***Supplementary Materials***

In the supplementary materials, you will find examples of typical written test items and assessment center exercises. These example items and exercises will give you an idea of what to expect in this promotional process.



The stem can be of three types:

- Background information followed by a direct question. One of the options will answer the question.
- A partial statement that ends with a colon ( : ). One of the options will complete the sentence.
- Fill-in the blanks. The statement should provide a clue to what the missing word or phrase is. One of the options will fit into the blank.

The answers:

- All of the options, correct and incorrect are taken directly from the source material.
- Some questions may appear to have more than one correct answer. However, there is one option that is best. If you believe that there is more than one right answer, choose the option that you believe is the most correct.

### ***Situational Judgment Items***

Situational Judgment items are not drawn directly from the Official Reading List materials. However, the correct responses to the items will be consistent with the department's standard operating procedures. The Situational Judgment questions require the application of knowledge and skills to specific job-related situations appropriate to your department and the rank for which you are testing. These items measure practical application of technical job knowledge, supervisory and management skills, and "people skills" in realistic contexts. There will typically be 20 to 40 Situational Judgment questions on a test.

Each Situational Judgment question presents a complex scenario with 5 possible answer choices. You must read all of the answer choices, and then identify the answer choice that best represents what you would do in the situation described. These questions describe situations related to an incident, event, or subject and ask what you would do to effectively solve the problem or handle the situation. These questions measure a variety of skills, including problem solving, decision making, interpersonal skills, technical and tactical knowledge, as well as many other relevant skills. For these types of questions, there may be more than one correct answer or way to deal with the situation. Each of us is different, and we solve problems and deal with situations differently. However, in a written test format, it is important for you to choose the one response that comes closest to how you would respond, even if it is not exactly what you would do or think.

Try to place yourself in each situation, or remember a situation you have been in that was similar to the one described. If you do not totally agree with the answer choices that are provided, try to pick the answer that is the closest to how you would respond. You may feel that more than one of the answer choices is correct. In some cases, there may actually be more than one correct answer. However, you must choose the one answer that best represents your style and approach to solving the problem or handling the situation and that is a correct response in the department. If there is more than one correct answer, you will receive full credit for the question as long as you choose one of the correct answers, regardless of which one you choose.



When you know that other people are relying on your input in the group, you will be less likely to skip or procrastinate your own study sessions, and you will make sure you are prepared when the group meets. Each person in the group should contribute information and ideas equally. Meeting with other people who are going through the same process will help lend some support, and will motivate you to study.

### ***Develop Excellent Reading Skills***

One of the important test preparations you can do is to assess and improve your reading skills. If you are not accustomed to reading, you will be at a disadvantage when you have to read for 2 to 3 hours at one time during the test. In addition, effective reading skills are a requirement for studying the textbooks. Get into a habit of reading at least 30 minutes every day. You can read newspapers, magazines, books, or any material that is interesting to you.

### ***Practice Taking Tests***

Taking a test is a skill. Some studies have found that many people do not perform well on tests because the test-taking experience is unnatural, unfamiliar, or intimidating. You should practice taking tests under "test-like" conditions. You can use the questions in a study guide or questions that you and your peers have developed. The test can be taken in any environment that has library type qualities.

### ***Take Care of Yourself***

Allow yourself to have some fun. Do not study in all your spare time. When you give yourself a break you will be much fresher when you decide to tackle the studying again. Give yourself at least one day off before the examination to avoid being exhausted or stressed the day of the exam. Most importantly, get a good night's sleep the night before the exam, and arrive early so you are not feeling rushed and anxious before the exam begins.

---

## **How to Review the Reading Material**

Because multiple texts and other sources have been assigned to the reading list, it is unlikely that you will have the opportunity to read the material more than once. Although you should be familiar with the material on the reading list from your studies and use of this material, a few helpful hints will help you study the material more effectively for the examination.

### ***Obtain an Overview of the Material***

- 1) Look at each reading source to see how it is organized and how many pages of reading are required for each manual. Be sure to note on the reading lists if some sources have chapters that have been excluded from the reading requirements.
- 2) Before you begin reading, skim the chapter for chapter objectives, headings, subheadings, and review questions to get an idea of the content of the chapter.

### ***Taking Notes from a Textbook or Internal Manuals***

First, read the entire chapter or section, then go back and take notes. Decide what the main and sub ideas of the section are and then paraphrase the ideas and important points. Putting the information into your own words will help you process and remember it.



- **Second, start controlling your physical nervousness by learning to relax.** If you feel yourself getting nervous, sit back comfortably in your chair, close your eyes, and take a few deep breathes. Imagine yourself doing well on the exam. Remember, a few minutes spent relaxing yourself, so that you can answer the questions intelligently, is not a waste of time. This is especially true when you recognize that spending 30 minutes aimlessly reading and guessing the answers to questions could be a disaster.
- **Third, avoid talking to people before the exam begins.** It is easy to allow yourself to become "worked up" on your own. If the people you talk to are anxious, you are likely to become anxious. You do not need help from anyone else!
- **Fourth, do not be hard on yourself.** If you think it will be a difficult exam, chances are you are not alone in that thought. You are not expected to know the answer to every question on the test. Everyone makes mistakes, so think positive, and try to do your best.

---

## Strategies for Taking the Test

The type of written test you will be taking is multiple-choice. The multiple-choice format of test items consists of the item stem (an introductory question or incomplete statement) and several alternative responses. The responses are suggested answers to the questions or completions of a statement.

On this type of test, you will be asked to identify a single answer from a number of alternatives. The steps you should follow to do well on this type of test are as follows:

### ***General Strategy***

- **Arrive on time and ready to begin the exam.**
- **Choose a good seat, get comfortable, and relax.**
- **Before you even look at the questions read the directions to make sure you understand how you are to answer the questions.** Do not hesitate to ask the administrator for clarification if you are unsure of what you are to do.
- **Look the test over before you begin answering any questions** in order to familiarize yourself with the entire test. Note how many pages there are on the test. If you accidentally skip an entire page of questions, your chances of promotion will be significantly reduced.
- **The time limits for this test are very liberal.** For a 100-question test, you have approximately 1 ½ minutes to answer each question. Keep track of the time and remember to allow some time at the end to go back and check your answers and to make sure you have answered all the questions. Use all of your time. You will not get extra credit for leaving early, and you may just remember something when you relax after you think you have finished the exam.
- **Skip the very difficult questions and come back to them after you have answered all others.** When you skip a question, be sure to skip to the corresponding number on the answer sheet. It is very easy to get off by one, so check yourself often.
- **If you cannot answer a question immediately,** translate the question into your own words. Read each option carefully. Use a strategy such as the process of elimination.



# The Assessment Center Process

*This section of the manual will provide you with an opportunity to learn how to do your very best in the assessment center exercises. You will learn how an assessment center promotional process is typically run, and what the results of this process are, for both a candidate and the department. You will also learn how to prepare for the assessment center exercises, with emphasis on preparations for the specific exercises that you will see in the assessment center process for your department. Examples of exercises are provided in the supplementary materials to this manual to prepare you for what to expect.*

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## What is an Assessment Center?

An assessment center is an integrated system of simulations designed to elicit behavior similar to that required for success in a target job. More simply, it is a series of activities that are similar to those performed in a given job. Each activity mirrors a different aspect of the job. Performance in these activities is observed by assessors who are trained to be fair and objective. The panel of objective assessors will be selected from departments similar to yours, based upon their expertise and knowledge regarding the target job. The assessors will observe you perform in a series of exercises, in order to evaluate several job performance dimensions deemed important to performing successfully on the job. Assessors compare candidates' performance to predetermined performance guidelines to ascertain who will perform effectively in the job.

---

## Why Use an Assessment Center?

It is always difficult to measure human behavior. Any type of testing process is imperfect. However, Assessment Centers are known to be a valid predictor of success on the job, and the results are reliable. Your evaluation will not be based on how you look or who you know. It will be based on what you know and what you can do.

For practical reasons, your Department cannot promote everyone who is eligible for promotion, and then see how they perform before making a final selection. The next best approach is to give you a chance to try activities that closely resemble the target job. In this way, an Assessment Center Process is like a try-out for a sports team. For example, a basketball coach who wants the best performers has potential players try out for the team. He does not assume that all tall individuals will make good players. The coach is trying to predict performance under actual game conditions by seeing how people do in a try-out situation. In a similar manner, the department is predicting future job performance by seeing how well you perform in a situation that closely parallels activities on the job. These activities are called simulations, or exercises, and are the major ingredients of the Assessment Center Process. In most of these exercises, you will actually be doing the task, not just telling someone what you would do. It is a real opportunity to demonstrate your abilities.

---

## How are the Exercises Developed?

In order to develop the exercises in which you will be participating, the job analysis was reviewed and updated to determine what knowledge, skills and abilities a candidate must possess in order to perform successfully. Job analysis is a generic term for the process of critically examining job components in order to provide a functional description of a job.





### ***Oral Presentation***

In this exercise, candidates are asked to prepare and present an Oral Presentation to the assessors. Like all assessment center exercises, the topic is adjusted to the targeted rank. An Oral Presentation for a candidate who would be expected to conduct training, for example, might include the presentation of an actual class. Various Oral Presentation topics and formats may be used. Some additional examples include: a presentation of facts before a legal board of inquiry, followed by questioning from an aggressive defense attorney, making a prepared statement at a press conference, presenting a budget request.

### ***Oral Resume***

In this exercise, you will be expected to prepare a brief presentation concerning your career history and objectives. You are encouraged to graphically display this information, as well as present it orally to the assessors.

### ***Role-Play***

The Role-Play exercise allows the assessors opportunities to evaluate candidates in realistic interactions with others. The situation for the Role-Play might be related to any aspect of the job for the rank. For example, a candidate might be required to handle a dispute between an old-fashioned officer and a young naïve officer. Alternatively, you might be required to explain a controversial policy or decision, with which you personally disagree. You will have some advance preparation time, which will be shown in your schedule.

### ***Structured Interview***

During this exercise, you will be asked to respond to several questions. The topics of the questions may cover a wide range of knowledge. For instance, one question may ask you to describe your background and how it has prepared you for the position. Another question might ask you to decide how you would react in a certain difficult situation. You will be given the questions to review before the actual interview.

### ***Written Exercise***

There are few professions where writing is trained or emphasized. However, there are very few professions in which writing is not important. What if a superior asked you to submit a report in a short amount of time? Could you turn in a well-written, professional document? The Written Exercise may be on any topic that is relevant for the rank in your Department. Candidates are asked to write a paper, memo, or other correspondence on a related topic, such as how to increase cooperation between the fire and police departments. The writing exercise is one that is easily practiced. You can write on topics of issue in your department and have others evaluate it for both writing ability and content.

---

## **Conducting the Assessment Center Process**

The sample schedule shown below will give you some idea of what a typical schedule would be like for the process. When you arrive, you will receive a packet of information about the process, and you will have time to become familiar with the contents of the packet and your individual schedule. All of the candidates will have exactly the same amount of time for preparation and presentation. However, due to the constraints of scheduling many candidates and assessors, candidates may be on-site for different lengths of time. You should be prepared to be on-site for as long as a normal 8-hour shift. The length of breaks between exercises may also vary, and you may have significant down time.



anecdotes are probably the best to use. However, you should be certain that the anecdotes do not detract from the exercise itself (i.e., don't make fun of the exercise, the process, the other candidates or the assessors). (2) If the opportunity arises to take a stance on a relatively controversial issue (one that is job related), and if you can defend that stance, do so.

### ***Be Prepared to State your Assumptions***

On almost every exercise, the candidate will have to make certain assumptions. It is best to inform the assessors of such assumptions. For example, suppose you were asked to teach a training class as your Oral Presentation exercise. You might choose to inform the assessors that if you were really to teach such a class, you would give a pre-test to evaluate the level of the class as well as a post-test to see how much was learned, and how well you did as an instructor. Alternatively, perhaps, you might tell the assessors that normally, you would use a variety of audio-visual equipment, and give some examples of how you might indeed use them. Another example would be before going into the details of how you prioritized your In-Basket items, you might briefly tell the assessors about the assumptions you made regarding the organization you represent. You might say that the department you just became the head of is in dire need of training, and that you would begin instituting such plans immediately.

### ***Be Natural, but Realize that You Are Being Evaluated***

If you have weaknesses, but tried to overcome them by "faking", you will never know whether you failed because of your faking, or because of genuine weaknesses. If you have weaknesses (and we all do), the assessment center process is an excellent tool to reveal them, receive a critical analysis of them, and to practice overcoming them before the next assessment center.

### ***When Possible, Take an Overall View of the Situation***

For example, if the items in the In-Basket appear to indicate that there are some serious problems in the department, you can tell the assessors that before explaining how you handled the items.

### ***Pay Close Attention to Time Limits***

You are responsible for managing your own time during the exercises. A digital watch with a stopwatch feature works well for this. Any watch will work, as long as you understand when the exercise is to finish. Then be sure to periodically check to see how much time you have left. You can speed up or slow down depending on the time left.

### ***Present the Breadth of Your Knowledge and Appropriate Details***

Let the assessors know the scope of what you know about a topic, then go into detail as time allows. Present as many details as necessary to fully explain the reasons for your actions and decisions. However, do not present everything you know about one topic, and run out of time to explain other topics. Do not refer to topics or use buzzwords unless you can readily discuss these in more detail. Do not get caught by the questions HOW or WHY.

### ***Materials and Supplies***

There is no advance preparation for the assessment center beyond taking the recommendations in this manual. You are not allowed to bring any written materials or pads of paper with you to the assessment center. All preparation will be done in the preparation room. We will provide paper, pens, flip charts, dictionaries, and all other materials that are needed. You may take your preparation materials from the preparation





- There is a tendency among many assessment center participants, especially those who have never been through one, to defer decisions because they do not have enough information. Obviously, there may be some situations where a definitive decision cannot be made due to lack of sufficient information. However, we recommend that you think through the situation and determine what could happen in the situation. You should present "if/then" situations to the assessors. In other words, "if such and such were the case, I would . . ." "However, if such and such happened, then I would . . ." The assessors will be looking for you to think through each situation, rather than to defer situations.
- State your assumptions. Remember that the assessors are not mind readers. If you make an assumption that affects how you handle certain items in your In-Basket, be certain to tell the assessors what those assumptions are.

## Emergency Scenario

- This assessment center exercise will test your knowledge and skills in a variety of areas, including technical job knowledge, tactical skills, and effectiveness under stress.
- One of the most common mistakes candidates make is to not use their time wisely. Time can go by very quickly in a fast-paced Emergency Scenario exercise. A clock will be provided in each exercise to help you gauge your time. Pace your self and slow down enough that you can present your ideas in a clear, precise, and understandable manner.
- To prepare, you might consider some Emergency Scenarios you have encountered in the past. Think through the steps and strategies that were effective as well as those that were not.
- Know your SOP's and other Department policies. When they are relevant and appropriate, mention them in your presentation to the assessors. The assessors are trained to look for your knowledge and application of policies and procedures.
- Review the information for each scenario that is provided to you in the preparation room. Review any pertinent details such as time of day, weather conditions, and location of the scenario. Think through the impact that this information will have on your strategy for handling the emergency.

## Oral Presentation

- Practice, practice, practice!
- Make a mental checklist of the key issues facing your department today. For example, is your department focusing on enhancing community relations, initiating a new prevention program, or facing major budget cutbacks? Knowing the current events and issues in your department will allow you to make a presentation that is thorough, relevant, and consistent with department goals, challenges, and initiatives.
- Find a willing family member or friend that will listen to you speak and then give you feedback. This is a great way to practice speaking and often is a good way to find out what you do well and what you need to improve.
- There are several good books and other resources available on enhancing your presentation skills. Go to your local library or bookstore to find one of these books and brush up on your presentation skills!

## Oral Resume

- In this exercise, you will have the opportunity to explain why you are the candidate for the position. This is your opportunity to "brag" a little and explain to the assessors why you think you would be the best choice.
- Your presentation skills must be polished for this type of an exercise! You may have all the experience and knowledge in the world, but if you cannot get your point across in a clear and understandable manner, it will not matter.



- You will be given the questions prior to meeting with the assessors. During this time, think through each question thoroughly. You will typically have 20 minutes to answer all the questions, which is an average of 5 minutes per question.
- Think about if/then scenarios. Consider how the Department is affected by the issue. Consider how the actions you would take in the situation would affect the Department, the public, your co-workers, anyone else. In other words, move away from your own personal stake in the issue and look at the big picture.

## Written Exercise

- There are few professions where writing is trained or emphasized. However, there are very few professions in which writing is not important. What if the Chief asked you to submit a report in a short amount of time? Could you turn in a well-written, professional document? The typical writing samples obtained from most job simulations are horrible. This is particularly unfortunate because the writing exercise is one that is easily practiced.
- Simply pick a topic, give yourself an hour to write on it, and have a colleague critique it.
- As a matter of fact, you will find that most of what we have for advice is basic information which we all learned in the 5th grade.
- Outline your paper. Most people are not good enough at writing to create an outline in their heads. We encourage you to write down at least a broad outline to structure your paper. On the other hand, do not be so detailed with your outline that you run out of time in writing your actual exercise. While they will be looking at your notes, the assessors will primarily be scoring your finished product.
- Stick to the problem at hand. Do not ramble! Review your work. It is absolutely amazing how many papers come back with poor spelling, incorrect grammar, bad punctuation, and other mistakes that could have easily been caught with a review. If you know you will be pressed for time, make the decision to say less, but to review your work, rather than saying more and not going over the final product. In addition, do not worry about scratching out poor grammar or spelling. It is much better to have scratch marks and a well-written document than no scratch marks and errors or poor writing. There will be a dictionary and a thesaurus available to you. Please take the time to use them!
- Consider your audience. A formal report to your Chief is different from a letter to a disgruntled citizen. Think about to whom you are writing and the appropriate tone to take with that individual.
- In terms of preparing for the subject of the Written Exercise, be prepared to discuss the current issues within the Department. Typically, you will have about an hour for this exercise.



#### 4. LEADERSHIP SKILLS (LEA)

There are many different styles of effective leadership, all of which share some common characteristics. An effective leader understands and embraces the organization's values, goals, and direction, and is able to instill these within subordinates. In addition, an effective leader has command presence and is respected. Included in the dimension of leadership skills are supervisory skills. Supervisory skills reflect the ability to interact with others, often in difficult situations, without incurring hostility, resistance, or resentment, while at the same time reaching personal or organizational objectives. Leadership and supervisory skills involve the ability to work cooperatively and effectively with diverse groups of people, both within an organization and out, identifying conflicts, and working toward resolution of those conflicts, along with assigning work, delegating, and giving orders so that appropriate resources are utilized and tasks are accomplished in an effective manner. This dimension involves the ability to help subordinates define personal goals, the ability to motivate subordinates, the ability to foster a learning environment, the ability to handle emergency incidents, decision-making, and decisiveness, as well as an understanding of the job role. Characteristics of this dimension include flexibility and adaptability, compassion, fairness, and objectivity. Components found within this dimension would include: leadership skills, and supervisory skills.

#### 5. TACTICAL SKILLS (TAC)

This dimension reflects the extent to which the candidate demonstrates a clear understanding of the important aspects of managing an emergency scene or high-risk incident. It also includes knowledge of firefighting tactics, incident command, equipment, and firefighter safety.

#### 6. ORAL COMMUNICATION AND PRESENTATION SKILLS (ORP)

The ability to organize one's thoughts, to be persuasive and articulate, and to effectively communicate is essential in most jobs. It is also important to present information in a clear and logical manner. This dimension includes the ability to actively listen to and understand information being relayed as well as present information in a manner that is appropriate for the given audience.

#### 7. WRITING SKILLS (WRI)

The ability to write well is essential to performing well. This dimension includes good grammar, punctuation, spelling, and sentence structure. In addition, it includes the ability to be logically organized and concise, yet persuasive in writing reports, memos, and other required correspondence and documentation.

## Scoring and Feedback

In the assessment center process, each candidate is evaluated on a variety of job performance dimensions utilizing 100-point, behaviorally-anchored rating scales. For a complete list of the dimensions that are measured, refer to the list above. The ratings are statistically combined to produce a combined total score across exercises, as well as scores reflecting your performance in each exercise. The combined total scores determine how well you scored on the Assessment Center. The results are then utilized for selection according to policy set forth by the rules of the department.

If your department chooses, you will receive a total score and a breakdown of your scores by exercise. You may also receive a more detailed feedback report. This will summarize comments from the assessors regarding some of your specific strengths and weaknesses.

**End of Orientation Manual**  
**GOOD LUCK!!!**



# Supplementary Materials to the Orientation Manual -GENERAL-

Topic	Page
Additional Resources	2
Sample Confidentiality Agreement	4



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## Communication and Interpersonal Skills

- Fire Up Your Communication Skills: Get People to Listen, Understand, and Give You What You Want!, by Captain Bob Smith, Code 3 Publishers, 1997.
- People Skills, by Robert Bolton, 1986.

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## Interviewing Skills

- Best Answers to the 201 Most Frequently Asked Interview Questions, by Matthew J. Deluca, McGraw-Hill, 1996.
- The Complete Job Interview Handbook, by John Marcus, Harper Perennial Library, 1994.

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## Presentation Skills

- Basic Presentation Skills, by Gary Kroehnert, McGraw-Hill, 1999.
- Effective Presentation Skills (A Fifty Minute Series Book), by Steve Mandel and Michael Crisp, Crisp Publication, 1993.
- Effective Presentation Skills: A Practical Guide for Better Speaking, by Steve Mandel, Crisp Publications, 2000.

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## Test-Taking Skills

- Taking the Anxiety Out of Taking Tests: A Step-by-Step Guide, by Susan Johnson, New Harbinger Publications, 1997.
- Test-Taking Strategies, by Judi Kesselman-Turkel and Franklyn Peterson, NTC/Contemporary Publishing, 1981.



# Supplementary Materials to the Orientation Manual -FIRE SERVICES WRITTEN TEST-

Topic	Page
Example Hydraulics Items	2
Example Technical Job Knowledge Items	3
Example Supervisory / Leadership Items	4
Example Situational Judgment Items	5



# Example Technical Job Knowledge Items

---

## Sample Question 1

An often overlooked but very important part of any apparatus inspection and maintenance program is the cleanliness of the vehicle and equipment. However, overcleaning of the apparatus can have negative effects. What is one negative effect of overcleaning?

- A. Overcleaning can drive grit and debris into the finish.
- B. Overcleaning removes the wax or similar polishes from the exterior of the apparatus.
- C. Overcleaning removes the lubrication from chassis and aerial device components.
- D. Overcleaning corrodes the steel components of the apparatus body and chassis.

---

## Sample Question 2

While conducting an inspection of the outside of an apparatus, general problems are readily apparent by simply looking at the vehicle. What vehicle problems can be found through a visual inspection?

- A. Leaking fluids such as water, coolant, oil, or brake fluid.
- B. Malfunctioning fuel or oil pressure gauges.
- C. Cracking or damage to a hoseline.
- D. Missing or broken rescue winches.

---

## Sample Question 3

Several tasks must be accomplished when laying a hoseline. Which of the following tasks would be the first step in laying any hoseline?

- A. Remove a small amount of supply hose from the hose bed.
- B. Gather the appropriate tools that will be needed.
- C. Wrap the end of the hose around a stationary object.
- D. Make sure the proper adapters are present at each end.





# Example Situational Judgment Items

---

## Sample Question 1

One of the newer firefighters on your shift is very respectful and courteous when he talks to you, and you have not had any trouble with him. However, you have heard him make offhand negative comments about others. Recently, another individual told you that this firefighter complains about you and makes negative comments about you when you are not around. How would you handle this situation?

- A. Be more cautious around this firefighter until you know whether or not you can trust him.
- B. Ignore what you have heard; you cannot do anything about what someone says when you are not there.
- C. Tell others in the station to help you keep a record of what the firefighter says so you can discuss it with him.
- D. Tell all the firefighters as a group that if they have a problem with you or your decisions, you want them to discuss it with you.
- E. Explain to the firefighter the behavior you and others have noticed, and how this is causing a negative perception of him that he needs to change.

---

## Sample Question 2

During your shift, your station is scheduled for training involving multi-company drills. One of your firefighters, Skinner, has just called in sick. When he returns, he has an excuse note from a doctor. You have noticed that the last three times training has been scheduled, Skinner was absent. How would you handle the situation?

- A. Write up firefighter Skinner for abuse of sick leave.
- B. Order firefighter Skinner to make up training on his day off.
- C. Alert the Battalion Chief to schedule Skinner to make up training with another unit on an announced day.
- D. Advise firefighter Skinner that a pattern of absence is very noticeable and that his attendance in training will be monitored.
- E. Suggest to the Battalion Chief that a fit for duty test via Risk Management may be warranted.





# Supplementary Materials to the Orientation Manual -FIRE SERVICES ASSESSMENT CENTER-

Topic	Page
Example In-Basket	2
Example Hot Seat Emergency Scenario	8
Example Static Emergency Scenario	10
Example Oral Presentation	12
Example Oral Resume	13
Example Role-Play	14
Example Structured Interview	15
Example Written Exercise	16
Assessment Center Self Assessment	17



ITEM - A

MEMORANDUM

TO: Lieutenant Candidate  
FROM: Jones  
DATE: March 1, 1999  
SUBJECT: Injury

I just thought you should know that on a call we had a few days ago, I think Al strained his back. He probably did not say anything because he does not want anyone to think he might be out of shape. I think it happened when he lifted the stretcher of that very large man that had the heart attack last week. He says that he is all right, but I can see that he is in a lot of pain.



ITEM - B-2

February 27, 1999

Fire Chief Lansing  
Fictitious Fire Department  
2100 E. 58th Street  
Fictitious, AL 48901

Dear Chief Lansing:

I am writing to let you know that I have been having a problem working with one of your firefighters. I have been called in to work with the company at Station #1 on several occasions, and every time I show up to do my job as a reserve, I get a lot of grief from Firefighter Bolin. He is always saying that I am in the way and that I do not know what I am doing. Yesterday, he even told me to just get away from him and let him do his job.

I have trained very hard to be a reserve and I intend on joining your department someday. I do not think I deserve to be treated this way when I go out on a call. It does not look good in front of the other firefighters and the citizens are probably wondering what is going on. I would appreciate it if you would talk to Bolin, so I do not have to put up with this the next time I am called out to assist the department at an emergency scene.

Sincerely,

George Henry  
Reserve Firefighter



ITEM - D

MEMORANDUM

TO: Lieutenant Candidate  
FROM: EMS/Hazmat Coordinator  
DATE: March 1, 1999  
SUBJECT: Employee Conduct

I got a call yesterday from a supervisor at Minos Ambulance Service. He called to tell me that an ambulance had been sent out from their service to assist your company at an accident scene on two separate occasions in the last month. On both occasions, he received complaints from one of his female drivers that a Firefighter Bolin had made rude, sexist comments to her at the accident scene. He was really upset about this. I do not have to tell you how the Chief would feel about this. The department does not tolerate this kind of behavior. Since Bolin is in your company, I want you to investigate these incidents, and report back to me as soon as possible with the results.



## Hot Seat Emergency Scenario Exercise Incident Fact Sheet

---

**Location:** 7200 Fire Exercise Example Road  
**Date:** Thursday, September 7  
**Time:** 09:00 a.m.  
**Temperature:** 60° Fahrenheit  
**Wind:** None  
**Occupancy:** Apartment Complex  
**Structure:** Three (3) story, ordinary construction  
**Water Supply:** Two hydrants, one 100' east, one 250' west of structure.

### Initial Dispatch:

At approximately 09:00 a.m., Thursday September 7, Dispatch received a call from an individual who stated that he lives in the Fire Exercise Subdivision. He heard the alarm in the apartment next door and upon investigation found smoke coming from the second floor windows. He was unable to get anyone to the door. With this information, the following units were dispatched:

Engine 1 One (1) **YOU**, one (1) Engineer, and two (2) Firefighters  
Engine 2 One (1) Acting Lieutenant, one (1) Engineer, and two (2) Firefighters  
Engine 3 One (1) Lieutenant, one (1) Acting Engineer, and one (1) Firefighter  
Ladder 1 One (1) Acting Captain, one (1) Engineer, and one (1) Firefighter  
Rescue 2 One (1) Lieutenant, One Engineer, and one (1) Firefighter  
Battalion 1 One (1) Battalion Chief

### Other Information:

Ladder 1 and Battalion 1 are responding from City Hall and will be delayed.



## Static Emergency Scenario Exercise Incident Fact Sheet

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### VEHICLES AND STREETS

<b>BLUE SEMI-TRUCK</b>	Truck loaded with vegetables and other produce
<b>RED AUTOMOBILE</b>	Small hatchback
<b>PURPLE AUTOMOBILE</b>	Full-size 4 X 4 pickup truck
<b>ROAD DESCRIPTION</b>	Incident is at the intersection of 1 <sup>st</sup> Avenue and Main Street Main Street is a major arterial street 1 <sup>st</sup> Avenue is a minor side street
<b>TEMPERATURE</b>	57 Degrees Fahrenheit
<b>WIND</b>	Calm
<b>EXPOSURES</b>	Convenience Store located at SW corner Traffic
<b>WATER SUPPLY</b>	Two hydrants

### EMERGENCY CONDITIONS

- Time: 1630, Friday
- Hatchback is leaking gasoline and engine oil. Approximately 15 gallons is on the ground.
- No fire is showing.
- Passenger of red car is trapped and unconscious, leg is crushed by the engine block. Driver of red car was thrown clear and is lying unconscious on the road. Passenger and driver of purple pickup have minor cuts and scrapes; passenger hit his head on the windshield. Driver of blue semi-truck is uninjured.
- Traffic is still slowly moving west on Main Street. All other directions have stopped.
- No other emergency personnel have arrived on the scene.



## Example Oral Resume

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This exercise requires you to present your qualifications for the job of Lieutenant. You will have **15 minutes** to make an Oral Presentation to the assessors, which should emphasize your preparation and qualifications for this position. After you finish your presentation, the assessors will ask you questions regarding the information that you present.

You will have **30 minutes** to prepare and organize your presentation. During your preparation period, you will be provided with poster paper, index cards, and magic markers, as well as scratch paper. A flipchart will be available in the presentation room. You may utilize this material in any way you wish to aid you in your presentation. In preparing your self-presentation, you should keep in mind that you will be presenting to a small group of people. Also, you should remember that the assessors will be making their initial impressions of your qualifications for Lieutenant, so make your presentation as job-related as possible. Finally, in addition to telling the assessors *what* you have done, you should be prepared to discuss *how* what you have done has helped prepare you for the position of Lieutenant. You will have **15 minutes** to present your Oral Resume to the assessors. After your presentation, the assessors may ask you questions for **5 minutes**.



# Example Structured Interview

---

During this exercise, you will be asked to answer a set of questions that assesses your knowledge, skills and abilities. You will be required to organize your thoughts and orally present them clearly and concisely. Subject Matter Experts within your department have been extensively involved in the development of the questions. Each question gives you an opportunity to speak about a subject that is important in assessing your potential. The questions address topics and situations that are most important to your department at this time.

You will have **15 minutes** to review the questions before you begin the Structured Interview. You may take notes during this time and refer to them during the interview. Once the exercise begins, you will have **15 minutes** to answer all the questions. The exercise will begin when you enter the room. The assessors will read each question to you and wait for you to complete each answer. It is your responsibility to allocate your time accordingly for each answer. Remember to include the time that it takes for the assessors to ask each question when estimating your time. After the 15 minutes, the assessors will ask you questions for **5 minutes** to clarify any questions they may have about your answers.

## ***Question:***

You are a new Lieutenant in your department. You are speaking to a group of citizens at a community center about safety practices. During the question and answer session, an individual stands up and starts yelling at you because he has complained several times about a lack of responsiveness in your department and has never received a response. How would you respond?





# Assessment Center Self Assessment

---

The following questions address aspects of the performance dimensions that are used to assess assessment center candidates. How would you rate yourself on each of the following on a scale of 1 to 10 (10 being the highest)?

## Organizational and Technical Skills – \_\_\_\_\_

1. If your actions were ever questioned, would you be able to reference the appropriate departmental policy and procedure to defend your actions?
2. Do you know the goals and vision of your Department?

## Management and Practical Skills – \_\_\_\_\_

1. Do you ever find that things didn't turn out as you had expected and you are put in a bind because you weren't prepared?
2. When you are at an emergency scene, are you able to make quick decisions when others lives are in danger?
3. Do you think it is always appropriate to react in the same way when you are approached with a complicated situation?

## Interpersonal Skills – \_\_\_\_\_

1. If a member of the public approached you and questioned your actions, would you find yourself explaining the reason for your actions or getting defensive that an outside observer is questioning your decisions?
2. Are you as eager to help the community and provide them a service (i.e. open houses, educational training) as you are to fight fires?
3. Do you have any problems working with anyone in your Department?

## Leadership Skills – \_\_\_\_\_

1. Have you ever been in a situation where you were in charge and no one seemed to be paying any attention to you?
2. When you need to delegate a task, would you pass it on to someone who is very good at the task or to someone who needs to improve their skills related to the task at hand?
3. When you are caught in the middle of an argument or conflict, are you able to work with all of those involved to resolve the conflict or do you allow it to eventually work itself out?
4. When you are working with others, do you tend to go along with what they are doing or do you take more of a role in developing goals and a plan to accomplish those goals?

## Oral Communication and Presentation Skills – \_\_\_\_\_

1. Does anyone ever have to ask you if you were listening to what they were saying?
2. Do people often ask you to repeat yourself or not seem to understand what you are talking about?
3. Are you comfortable speaking in front of others (i.e. giving a presentation or conducting training)?

## **EXHIBIT D**

**Auburn Fire Division**

# Memo

**To:** All personnel  
**From:** D.C. Lamar  
**Date:** February 17, 2006  
**Re:** Battalion Chiefs Assessment

The battalion chief's vacancy has been posted. To be eligible an applicant must be a current non-probationary Lieutenant. Applicants must fill out a City of Auburn application and submit a short one to three page resume. An orientation session is scheduled for 6:00 PM February 28, 2006 at the Public Safety Building large conference room. Candidates must attend the orientation session. Dates for the assessment will be announced at that time. The session will include an explanation of the process and practical information to assist the candidates in preparation. A one year hiring list will be established.

A written exam will be a component of the assessment process. The reading materials have been obtained and will be issued as soon as all applications are received.

All eligible personnel are encouraged to apply and good luck in the process.



## **EXHIBIT E**

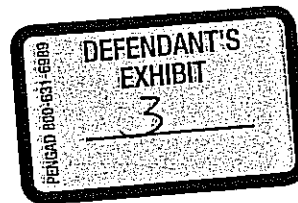
# Memo

To: All Career Personnel

From: Chief Larry Langley

Date: February 23, 2006

Ref: Battalion Chief Assessment

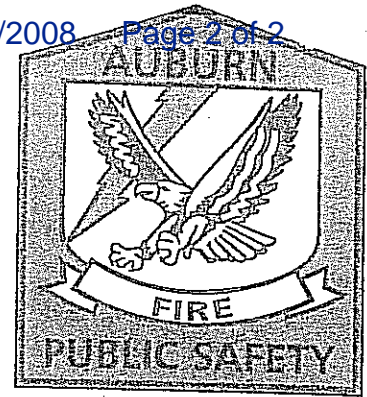


On February 17, 2006 a memo was sent to all personnel on the Battalion Chiefs vacancy explaining that only non-probationary Lieutenants were eligible to apply for the position. After reviewing the current job descriptions and minimum qualifications, it was discovered that non-probationary Firefighters and the probationary Lieutenant are eligible to apply for the Battalion Chiefs Vacancy. I know this is short notice but any of the eligible applicants mention above if interested need to apply by February 28, 2006 at 3:00 PM. Orientation is on February 28, at 6:00 PM in the large conference at the Public Safety Building. This session will include an explanation of the process and practical information to assist candidates.

## **EXHIBIT F**

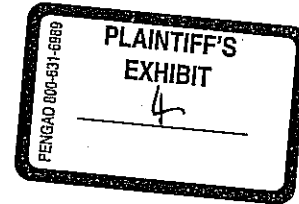
City of Auburn

DEPARTMENT OF PUBLIC SAFETY  
FIRE DIVISION  
RONNIE BLANKENSHIP, FIRE CHIEF



HOME OF AUBURN UNIVERSITY

April 4, 1996




Dear Gerald:

Congratulations! You were ranked first in the Lieutenant assessment center. Your overall score of 20.26 put you tops on the Lieutenant's list. I am proud to be able to promote you to the rank of Lieutenant based on your knowledge and ability. I hope this is just one rung of many on your career ladder in the fire service.

Your leadership is needed on a shift other than the one you are currently working. Your promotion will be effective April 7. You will need to report for duty on that date to start your new role in the fire service.

Again, I congratulate you for your achievement in the Auburn Fire Division. I look forward to working with you in your leadership role. With your personality and ingenuity, I expect many good things from you.

Sincerely,

  
Ronnie Blankenship  
Fire Chief

359 EAST MAGNOLIA • AUBURN, ALABAMA 36830  
(205) 821-1110 • FAX NUMBER: (205) 887-4996

Ugletree-11 Disclosures

00297

## **EXHIBIT G**



candidates would complete the entire process. A minimum score must be attained to make the final list. The question we had was would we use multiple cut scores or single cut scores.  
lee

Lee Y. Lamar Jr.  
Deputy Chief/ Operations  
Auburn Fire Division  
161 North Ross Street  
Auburn, AL 36830  
334-501-3162  
llamar@auburnalabama.org

---

From: Steve Reeves  
Sent: Wednesday, February 15, 2006 2:55 PM  
To: Stephanie L. King; Lee Y. Lamar, Jr.; Larry Langley; Bill James  
Subject: FW: scheduling questions

Did we agree that we would allow everyone to participate in each element but that a minimum cut off score had to be achieved on the test in order be selected? If so, can we have the test on the same day?

Steve

---

From: Erin Hardin [mailto:ehardin@cwhms.com]  
Sent: Wednesday, February 15, 2006 1:51 PM  
To: Steve Reeves  
Subject: scheduling questions

Hi Steve,

Did you find out whether it would work to give the written test on the assessment center training day and run all candidates through the assessment center? Or, will we have to do the written test earlier to screen the candidates for the assessment center?

Hope things are going well there,

Erin Hardin  
Consultant

Erin Hardin

---

From: Lee Y. Lamar, Jr.  
To: Erin Hardin  
Subject: RE: scheduling questions

In previous in-house it was a minimum 70 to keep going. Sounds great. lee

Lee Y. Lamar Jr.  
Deputy Chief/ Operations  
Auburn Fire Division  
161 North Ross Street  
Auburn, AL 36830  
334-501-3162  
llamar@auburnalabama.org

---

From: Erin Hardin [mailto:ehardin@cwhms.com]  
Sent: Wednesday, February 15, 2006 3:20 PM  
To: Lee Y. Lamar, Jr.; Steve Reeves; Stephanie L. King; Bill James; Larry Langley  
From: mblair@cwhms.com  
Subject: RE: scheduling questions

Then we will just plan on doing the written test on the assessment center training day. I had recalled that there was a question of whether it was mandated somewhere that the test be used as an eligibility hurdle for the assessment center. Once you review the exercises, you all can discuss cut scores with Michael. Thanks!

Erin Hardin  
Consultant  
ehardin@cwhms.com

-----Original Message-----

From: Lee Y. Lamar, Jr. [mailto:llamar@auburnalabama.org]  
Sent: Wednesday, February 15, 2006 2:07 PM  
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Hope things are going well there,

Erin Hardin  
Consultant  
9085 E. Mineral Circle, Suite 350  
Englewood, CO 80112  
(303) 617-3433 (Voice)  
(303) 617-3436 (Fax)  
ehardin@cwhms.com

2/15/06 emails

**Erin Hardin**

From: Steve Reeves  
To: Erin Hardin  
Cc: Bill James  
Subject: RE: scheduling questions

It's been wild here (our CM has been asked to resign and that was going on while you were here and has continued to be an issue I have been dealing with). I remember that I was going to talk to the attorney. It slipped my mind. I will do that now and get back with you.

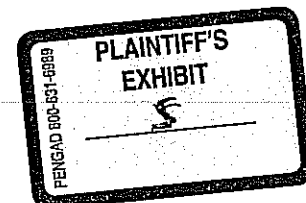
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Cc: mblair@cwahms.com  
Subject: RE: scheduling questions

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Erin Hardin

Consultant

ehardin@cwahms.com



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To: Steve Reeves; Stephanie L. King; Erin Hardin; Bill James; Larry Langley  
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Lee Y. Lamar Jr.

Duty Chief/ Operations

Auburn Fire Division

## **EXHIBIT H**



## City of Auburn

Home of Auburn University

### Proposed Modification of the Fire Lieutenant Promotional Process and Reclassification of Team Leaders to Fire Lieutenants

#### Background Information

The settlement order dated February 15, 1991, regarding *Clinton W. Hammock, et al. vs. The City of Auburn, et al*, CV-87-680-E stipulates that the City of Auburn will utilize the assessment center promotion process submitted to the Federal Court for the jobs of Fire Lieutenant and Fire Captain. The plaintiffs and defendants to this suit agreed to this stipulation nearly 14 years ago. Since that time, many changes have occurred in the structure and staffing of the Fire Division in response to City growth and service needs.

On February 28, 2005, the Team Leaders of the City of Auburn Public Safety Department—Fire Division requested Deputy Public Safety Director for Fire Operations Larry Langley to “petition the Court, on our behalf, to: (1) amend the portion of the settlement agreement pertaining to the Lieutenant promotional process and to (2) permit the City to reclassify the current Team Leaders to the class of Fire Lieutenant.” A copy of the Team Leaders’ petition is attached to this memo and shown as Exhibit A. While the promotional process utilized for Team Leaders was a very similar process to that approved by the Court for the job of Lieutenant, it was not identical; notably, it did not use outside assessors for the exercises, and the exercises were developed by the City, not a consultant. The job descriptions of Team Leader and Fire Lieutenant are virtually identical. In considering the request from the Team Leaders, the City of Auburn has learned that the Court does not retain jurisdiction over the settlement agreement.

#### Proposed Changes

In response to the petition from the Fire Division Team Leaders, the City of Auburn proposes that:

1. The Court approved assessment center process submitted for Fire Lieutenant will be considered to have expired. The City of Auburn will not be bound to the requirement of using an outside consultant or outside assessors to develop and administer an assessment center process for promotion to the job of Fire Lieutenant. The City of Auburn will, however, use neutral, job-related selection tests, exercises and information in making promotion decisions to the job of Fire Lieutenant consistent with the requirements of the City of Auburn Personnel Policies; and

2. All employees currently holding the title of Team Leader will be reclassified to Fire Lieutenant.

The City seeks the input of those employees who are affected by the requests contained in the petition from the Team Leaders. Therefore, you are asked to respond to this proposal. Please provide the information requested below and return the signed original to Human Resources Director Steve Reeves in the attached envelope by December 31, 2005.

Acknowledgement and Response

I acknowledge that I have read the foregoing information and proposal regarding the expiration of the Court approved Fire Lieutenant assessment center process and reclassifying those employees holding the job of Team Leader to Fire Lieutenant. I hereby (please initial the response you select):

☒ agree with the proposal.

☐ do not agree with the proposal.

Name (please print)

Signature

Job Title

Date

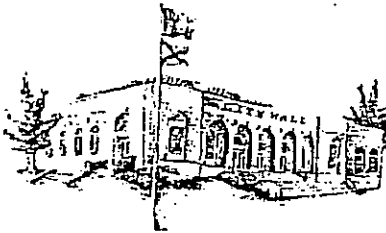
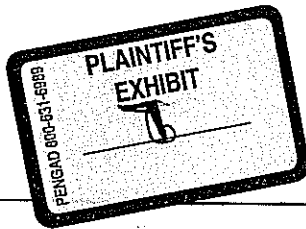
*Gerald Stephens*  
*G. Stephens*

*Fire-Lieutenant*  
*Thursday 12/23/05 @ 1500hrs*

## **EXHIBIT I**

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**City of Auburn**

Home of Auburn University

**Proposed Modification of the Fire Lieutenant Promotional Process and  
Reclassification of Team Leaders to Fire Lieutenants**

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☐ agree with the proposal.

☒ do not agree with the proposal.

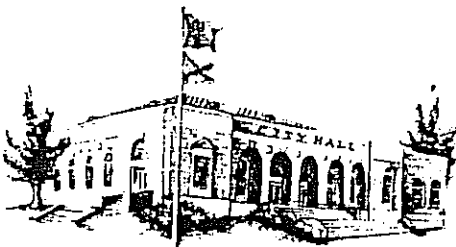
Christopher E. Turner  
Name (please print)

Christopher E. Turner  
Signature

Fire Fighter  
Job Title

12/29/05  
Date

## **EXHIBIT J**



City of Auburn

Home of Auburn University

Updated Policies  
Received 5/20/05  
@ 1500 hrs.

## MEMORANDUM

To: City Employees  
From: David Watkins, City Manager *DW*  
Subject: Personnel Policies  
Date: May 19, 2005



Following careful review by the department heads, the City Attorney, and me, the City Council adopted the updated Personnel Policies at its meeting on May 17, 2005. As before, these Policies serve to promote the fair and equitable treatment of employees based upon merit principles, to describe employee benefits and rights, to outline rules and regulations regarding performance and conduct, to comply with numerous laws, and to guide many administrative decisions that must be made to deliver quality, cost effective services to our citizens through the City's workforce.

The new Personnel Policies are being printed and when they are distributed they will be available for your review in your department's administrative office. However, I want to mention to you several of the important changes.

Section 3.02 (Holidays). For law enforcement officers, communication officers and water treatment plant operators, the observed holiday will be the actual holiday unless otherwise specified by the City Manager.

Section 3.03 and 4.04 (Annual Leave and Sick Leave). In order to take advantage of the annual and sick leave tracking and valuation capabilities that the new payroll software offers and to promote proportionality in leave benefits received, many of the text changes in Sections 3.03 and 3.04 implement hours as the basis for leave accrual and do so in proportion to the number of hours an employee would normally work in a year. For most employees, this has no impact other than allowing employees to accrue and use leave in hours instead of days. However, current employees who are accruing a work day that is greater than 8 hours (police officers, firefighters, communications officers, and water treatment plant operators) have been grandfathered into the previous system, including how leave is cashed-out upon separation, unless they elect to switch over to accruing leave in hours within 90 days of the adoption of these policies. For these employees, more information will follow regarding this one time election. All employees who are currently accruing an

2.05

Hiring Lists. When approved by the City Manager, and when notification is first given through vacancy announcements or other means approved by the City Manager prior to any selection screening activity, a list of qualified applicants may be created from which future vacancies may be filled for a period not to exceed one year from the date the position vacancy is filled, unless otherwise approved by the City Manager. A copy of each hiring list shall be maintained in the HRM Department. Generally, hiring lists may be appropriate when the screening process for a particular job is time consuming and expensive due to extensive testing, background investigation, and the probability that other position vacancies for the same job will occur within one year.

Notwithstanding the above, if a new vacancy occurs in a position for which the application process was closed within the previous 30 days, a department head may rely on the previously developed applicant pool to fill the new vacancy.

2.06

Hiring of Family. Two or more members of a family shall not be employed by the City if such employment will result in one supervising a member of his/her family, or where one member of a family occupies a position which has influence over another's employment, promotion, salary administration and other related management or personnel considerations. A family shall include parents, parents-in-law, grandparents, husbands, wives, brothers, sisters, children (including legally adopted children), aunts, uncles, brothers-in-law and sisters-in-law, children-in-law, nieces, nephews, and grandchildren.

This policy does not include employees in this situation working for the City as of the date of the adoption of these Policies. Exceptions to this section may be made only by the City Manager in writing.

2.07

Probation. The probationary period is the part of the examination process which is used to observe the employee's work, to secure the most effective adjustment of the employee to his or her new position, and to reject an employee who does not meet required work standards. The probationary period for all regular appointments shall be for a minimum period of six months, except for police officers and firefighters, who shall serve a twelve month probationary period. However, some jobs may require longer probationary periods based on the amount of time required to learn a job, to receive required certifications, or upon the inability to evaluate significant aspects of a job due to work cycle factors.

With the prior approval of the City Manager, a department head may extend the required probationary period up to six months if necessary for the employee to meet standards required in the job, to allow more time to

are not eligible for a probationary increase, and their base pay rate will not change as a result of the transfer or completion of the probationary period, unless such probationary period is one year. During the probationary period, the employee's performance will be evaluated in accordance with Section IX, Employee Performance Appraisal. If a transferred employee's performance is documented to be inadequate, he/she may be removed from his or her new position and may be eligible to be returned to his/her prior position or to an equivalent position, if available. However, the City reserves the right to separate such an employee in the City's discretion.

## 2.09

Promotion. A promotion is an assignment of an employee from one position to another which has a higher maximum rate of pay, rank, and responsibility. Promotion in every case must involve a definite increase in duties and responsibilities and shall not be made merely for the purpose of effecting an increase in compensation. Refer to Section 11.06 regarding rates of pay for promoted employees.

An employee who receives a promotion shall serve a probationary period consistent with Section 2.07, and shall be eligible for a step increase in pay upon completion of probation, unless such pay increase would exceed the maximum of the pay grade.

## 2.10

Demotion. A demotion is an assignment of an employee from one position to another which has a lower maximum rate of pay, rank, and responsibility. An employee may be demoted for any of the following non-disciplinary reasons:

- A. Because his or her position is being abolished and he or she would otherwise be laid off;
- B. Because there is a lack of work;
- C. Because there is a lack of funds;
- D. Because the employee does not possess the necessary qualifications (i.e. loss or suspension of a driver's license) to render satisfactory service in the position he/she holds;
- E. Because the employee voluntarily requests such a demotion and it is available;
- F. When an employee, due to a disability, becomes unable to perform the essential functions of his or her present job with, or without, a reasonable accommodation;
- G. For any other reason deemed to be in the best interest of the City as determined by the City Manager.

## **EXHIBIT K**

## CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form

ENTER CHARGE NUMBER  
[X] EEOC

and EEOC

(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)

Eddie Ogletree

HOME TELEPHONE NO.  
(Include Area Code)  
(334) 332-5766

STREET ADDRESS  
106 Pioneer Drive

CITY, STATE AND ZIP  
La Grange, Georgia 30240

COUNTY  
Troup

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

The City of Auburn

NO. OF  
EMPLOYEES/MEMBERS  
Over 15

TELEPHONE NO. (Include  
Area Code)  
(334) 501-7260

STREET ADDRESS

144 Tichenor Avenue, Ste. 1

CITY, STATE AND ZIP  
Auburn, Alabama 36830

COUNTY  
Lee

NAME

TELEPHONE NO. (Include  
Area Code)

STREET ADDRESS

CITY, STATE AND ZIP

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es):

☒ Race ☐ Color ☐ Sex ☐ Religion ☐ National Origin

☐ Retaliation ☐ Age ☐ Disability ☐ Other

DATE MOST RECENT OR  
CONTINUING DISCRIMI-  
NATION TOOK PLACE  
(Month, day, year)  
7/27/2006

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):

SEE EXHIBIT A

[X] I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

*Eddie Ogletree*

Date 9/5/06

*Eddie Ogletree*  
Charging Party  
(Signature)

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS DATE  
(Day, month, and year) Sept 5 2006

SEP 11 2006

RECEIVED

Notary Public, Troup County, Georgia  
My Commission Expires April 7, 2010

*John Carroll*



## EXHIBIT A

Lieutenant Eddie Ogletree is an African American and has served the City of Auburn Fire Department for more than (22) twenty two years. On or about February 2006, Lieutenant Ogletree applied for a promotion from Lieutenant to the position of a Battalion Chief (Captain). Prior to February 2006, only non probationary Lieutenants were allowed to apply for the position of Battalion Chief. However, in February 2006, the respondent City of Auburn changed its policies to allow any fire fighter, including entry level fire fighters, to apply for the Battalion Chief position. Also, during this same period, the City of Auburn Fire Department changed its policies to require applicants for Battalion Chief to pass a written test. Coincidentally, these policy changes occurred at a time when two African American Lieutenants and one entry level African American Firefighter became eligible for the position of Battalion Chief. Seniority within the department was discarded as a criteria for promotion to the Battalion Chief position.

Lieutenant Ogletree was denied the promotion to Battalion Chief in April 2006. The denial of the promotion was racially based. At the time of Lieutenant Ogletree's application, there were three Battalion Chief positions available, and each position was filled by a Caucasian team leader (Lieutenant). Each of the applicants that were awarded the Battalion Chief position have less seniority and experience than Lieutenant Ogletree.

Caucasian applicants for the Battalion Chief position were given preferential treatment regarding the application process, test aids and test grades.

The policy changes and preferential treatment towards Caucasian applicants combined to cause the denial of Lieutenant Ogletree's application for promotion to Battalion Chief in April 2006. Moreover, the City of Auburn has violated, and continues to this day to violate Federal Court Orders requiring them to alter hiring and promotion policies and procedures in order to provide equitable treatment to African Americans. Despite these Federal Court Orders, the City of Auburn has intentionally changed its policies and procedures to exclude African Americans from the hiring and promotion practice.

Lieutenant Ogletree filed a grievance against the City of Auburn and followed the grievance administrative process to its completion. In July 2006, the City of Auburn affirmed its decision not to promote Lieutenant Ogletree to the position of Battalion Chief.

RECEIVED

7000

SEP 11 2006

BIRMINGHAM FIRE DEPARTMENT

## **EXHIBIT L**

CHARGE DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form

ENTER CHARGE NUMBER

[X] EEOC

920-2006-04928

(State or local Agency, if any)

and EEOC

NAME (Indicate Mr., Ms., or Mrs.)

Gerald Stephens

HOME TELEPHONE NO.

(Include Area Code)

(334) 502-2946

STREET ADDRESS

828 Cahaba Drive

CITY, STATE AND ZIP

Auburn, Alabama 36830

COUNTY

Lee

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

The City of Auburn

NO. OF

EMPLOYEES/MEMBERS

Over 15

TELEPHONE NO. (Include

Area Code)

(334) 501-7260

STREET ADDRESS

144 Tichenor Avenue, Ste. 1

CITY, STATE AND ZIP

Auburn, Alabama 36830

COUNTY

Lee

NAME

TELEPHONE NO. (Include

Area Code)

STREET ADDRESS

CITY, STATE AND ZIP

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es):

☒ Race☐ Color☐ Sex☐ Religion☐ National Origin☐ Retaliation☐ Age☐ Disability☐ Other

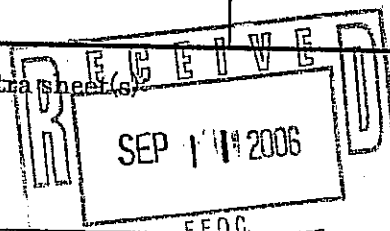
DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE

(Month, day, year)

7/27/2006

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s))

SEE EXHIBIT A



[X] I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

March 23, 2009

SUBSCRIBED AND SWORN TO BEFORE ME

THIS DATE 9/5/06

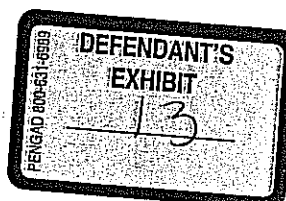
(Day, month, and year)

September 5, 2006

Date

Charging Party  
(Signature)

Penelope D. McCoy



## EXHIBIT A

Lieutenant Gerald Stephens is an African American. On or about February 2006, Lieutenant Stephens applied for a promotion from Lieutenant to the position of a Battalion Chief (Captain). Prior to February 2006, only non probationary Lieutenants were allowed to apply for the position of Battalion Chief. However, in February 2006, the respondent City of Auburn changed its policies to allow any fire fighter, including entry level fire fighters, to apply for the Battalion Chief position. Also, during this same period, the City of Auburn Fire Department changed its policies to require applicants for Battalion Chief to pass a written test. Coincidentally, these policy changes occurred at a time when two African American Lieutenants and one entry level African American Firefighter became eligible for the position of Battalion Chief. Seniority within the department was discarded as a criteria for promotion to the Battalion Chief position.

Lieutenant Stephens was denied the promotion to Battalion Chief in April 2006. The denial of the promotion was racially based. At the time of Lieutenant Stephens' application, there were three Battalion Chief positions available, and each position was filled by a Caucasian team leader (Lieutenant). Each of the applicants that were awarded the Battalion Chief position have less seniority and experience than Lieutenant Stephens.

Caucasian applicants for the Battalion Chief position were given preferential treatment regarding the application process, test aids and test grades.

The policy changes and preferential treatment towards Caucasian applicants combined to cause the denial of Lieutenant Stephens' application for promotion to Battalion Chief in April 2006. Moreover, the City of Auburn has violated, and continues to this day to violate Federal Court Orders requiring them to alter hiring and promotion policies and procedures in order to provide equitable treatment to African Americans. Despite these Federal Court Orders, the City of Auburn has intentionally changed its policies and procedures to exclude African Americans from the hiring and promotion practice.

Lieutenant Stephens filed a grievance against the City of Auburn and followed the grievance administrative process to its completion. In July 2006, the City of Auburn affirmed its decision not to promote Lieutenant Stephens to the position of Battalion Chief.

SEP 1 2006

SEP 1 2006

## **EXHIBIT M**



U.S. Department of Justice

Civil Rights Division

Employment Litigation Section - PHB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
[www.usdoj.gov/crt/emp/emphome.html](http://www.usdoj.gov/crt/emp/emphome.html)

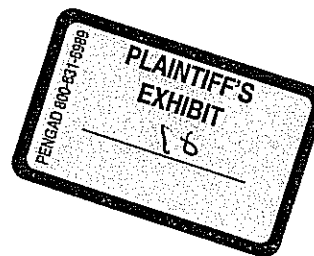
NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

WJK:WBF:mdw  
DJ 170-1-0

JUL 18 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Eddie Ogletree  
c/o Richard F. Horsley, Esq.  
1 Metroplex Drive, Suite 280  
Birmingham, AL 35209



Re: Eddie Ogletree v. City of Auburn,  
EEOC No. 420-2006-04927

Dear Mr. Ogletree:

Because you filed the above charge with the Equal Employment Opportunity Commission, and conciliation on that charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

We are returning the EEOC files pertaining to your case to the Birmingham District Office of the EEOC, located at the following address: Equal Employment Opportunity Commission, 1130 22<sup>nd</sup> Street, South, Birmingham, AL 35205.

This notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charges are meritorious.

Sincerely,

Wan J. Kim  
Assistant Attorney General  
Civil Rights Division

By:

William B. Fenton  
Deputy Chief  
Employment Litigation Section

cc: Arnold W. Umbach, Esq.  
City of Auburn

EEOC District Office



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Birmingham District Office**

Ridge Park Place  
1130 22<sup>nd</sup> Street, Suite 2000  
Birmingham, AL 35205  
(205) 212-2100  
TTY (205) 212-2112  
FAX (205) 212-2105

Charge Number: 420 2006 04927

Eddie Ogletree  
106 Pioneer Drive  
LaGrange, Georgia 30240

Charging Party

City of Auburn  
144 Tichenor Avenue, Suite 1  
Auburn, Alabama 36830

Respondent

**DETERMINATION**

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. (Title VII). Timeliness and all other requirements for coverage have been met.

Charging Party alleges he was not promoted because of his race, Black, in violation of Title VII.

Evidence substantiates that Respondent used tests which discriminated against Black applicants as a class in its promotions to Battalion Chief. Evidence indicates that Charging Party and other Black candidates were disqualified for promotion by use of this test. Evidence further indicates all resulting promotions to Battalion Chief were of White applicants.

I have determined that the evidence obtained during the investigation establishes reasonable cause to believe a violation of the statute occurred as alleged.

Upon finding there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. Please complete the enclosed Invitation to Conciliate and return it to the Commission at the above address no later than April 16, 2007. You may fax your response directly to (205) 212-2105 to the attention of J.W. Furman. Failure to respond by April 16, 2007, will indicate that you are not interested in conciliating this matter and the Commission will determine that efforts to conciliate this charge as required by Title VII, Section 706(b), have been unsuccessful.

Letter of Determination  
Charge Number 420 2006 04927  
Page 2

If the Respondent declines to participate in conciliation discussions or when, for any other reason, a conciliation agreement acceptable to the Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

On Behalf of the Commission:

4/3/07  
Date

Delner Franklin-Thomas  
Delner Franklin-Thomas  
District Director

Encl: Invitation to Conciliate

cc: Richard F. Horsley  
Goozee, King & Horsley  
1 Metroplex Drive, Suite 280  
Birmingham, Alabama 35209

Arnold W. Umbach, Jr.  
Adams, Umbach, Davidson & White  
122 Tichenor Avenue  
Auburn, Alabama 36830



## **EXHIBIT N**



U.S. Department of Justice

Civil Rights Division

Employment Litigation Section - PHB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
[www.usdoj.gov/crt/emp/emphome.html](http://www.usdoj.gov/crt/emp/emphome.html)

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

WJK:WBF:mdw  
DJ 170-1-0

JUL 18 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Gerald Stephens  
c/o Richard F. Horsley, Esq.  
1 Metroplex Drive, Suite 280  
Birmingham, AL 35209



Re: Gerald Stephens v. City of Auburn,  
EEOC No. 420-2006-04928

Dear Mr. Stephens:

Because you filed the above charge with the Equal Employment Opportunity Commission, and conciliation on that charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

We are returning the EEOC files pertaining to your case to the Birmingham District Office of the EEOC, located at the following address: Equal Employment Opportunity Commission, 1130 22<sup>nd</sup> Street, South, Birmingham, AL 35205.

This notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charges are meritorious.

Sincerely,

Wan J. Kim  
Assistant Attorney General  
Civil Rights Division

By:

William B. Fenton  
Deputy Chief  
Employment Litigation Section

cc: Arnold W. Umbach, Esq.  
City of Auburn

EEOC District Office



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Birmingham District Office**

Ridge Park Place  
1130 22<sup>nd</sup> Street, Suite 2000  
Birmingham, AL 35205  
(205) 212-2100  
TTY (205) 212-2112  
FAX (205) 212-2105

Charge Number: 420 2006 04928

Gerald Stephens  
828 Cahaba Drive  
Auburn, Alabama 36830

Charging Party

City of Auburn  
144 Tichenor Avenue, Suite 1  
Auburn, Alabama 36830

Respondent

**DETERMINATION**

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. (Title VII). Timeliness and all other requirements for coverage have been met.

Charging Party alleges he was not promoted because of his race, Black, in violation of Title VII.

Evidence substantiates that Respondent used tests which discriminated against Black applicants as a class in its promotions to Battalion Chief. Evidence indicates that Charging Party and other Black candidates were disqualified for promotion by use of this test. Evidence further indicates all resulting promotions to Battalion Chief were of White applicants.

I have determined that the evidence obtained during the investigation establishes reasonable cause to believe a violation of the statute occurred as alleged.

Upon finding there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. Please complete the enclosed Invitation to Conciliate and return it to the Commission at the above address no later than April 16, 2007. You may fax your response directly to (205) 212-2105 to the attention of Glenn Todd. Failure to respond by April 16, 2007, will indicate that you are not interested in conciliating this matter and the Commission will determine that efforts to conciliate this charge as required by Title VII, Section 706(b), have been unsuccessful.

Letter of Determination  
Charge Number 420 2006 04928  
Page 2

If the Respondent declines to participate in conciliation discussions or when, for any other reason, a conciliation agreement acceptable to the Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

On Behalf of the Commission:

4/3/07  
Date

Delner Franklin-Thomas  
Delner Franklin-Thomas  
District Director

Encl: Invitation to Conciliate

cc: Richard F. Horsley  
Goozee, King & Horsley  
1 Metroplex Drive, Suite 280  
Birmingham, Alabama 35209

Arnold W. Umbach, Jr.  
Adams, Umbach, Davidson & White  
122 Tichenor Avenue  
Auburn, Alabama 36830

## **EXHIBIT O**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual; )  
GERALD STEPHENS, an individual; )

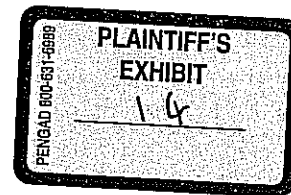
Plaintiff, )

vs. )

CIVIL ACTION NO:  
3:07-cv-867-WKW

CITY OF AUBURN, a municipality in The )  
State of Alabama; LARRY LANGLEY, an )  
Individual; LEE LAMAR, an individual; )  
BILL HAM, Jr., an individual; STEVEN )  
A. REEVES, an individual; BILL JAMES, )  
an individual; CHARLES M. DUGGAN, )  
an individual; and CORTEZ LAWRENCE, )  
an individual; )

Defendants, )



**DEFENDANT CITY OF AUBURN'S RESPONSES TO PLAINTIFFS' FIRST SET  
OF INTERROGATORIES**

COMES NOW, Defendant City of Auburn and herewith responds to Plaintiffs'  
Interrogatories as follows:

**GENERAL OBJECTIONS**

Defendant objects to each of Plaintiff's discovery requests to the extent that each is overly broad, vague, unduly burdensome, seeks information not designed nor reasonably calculated to the discovery of relevant evidence; and, purport to request information protected by the attorney/client privilege or the work-product doctrine or seeks information taken and/or prepared in anticipation of litigation, or privileged, not subject to discovery or which otherwise are impermissible subjects of discovery under the rules of civil procedure.

Defendant further objects to each discovery request to the extent each seeks documents or things which constitute confidential, proprietary information, or to which Defendant has a duty or obligation of confidentiality with respect to persons or entities not parties to this litigation. This objection is made specifically, but without limitation, with respect to any request which entails disclosure of the identities or other confidential information of persons not parties to this litigation, whose privacy rights would be violated by such disclosure.

### **SPECIFIC RESPONSES**

1. Provide the name, address and job title of the individual responding.

Response: The Defendant objects to this Interrogatory as privileged, not subject to discovery and seek information not designed nor reasonably calculated to lead to the discovery of relevant evidence. Without waiving said objection, these are the responses of the City.

2. Describe in detail any and all promotions for which the Plaintiffs have applied within the last (10) years, including the job title for which they sought promotion and the date of their applications.

Response: Stephens applied for promotion to Fire Training Officer May 26, 2005. Both Plaintiffs applied for the Battalion Chief position February 21, 2006.

3. For each promotion listed in the previous Interrogatory, please state whether the Plaintiffs received those promotions.

Response: Plaintiffs were not promoted.

4. Provide names, last known addresses and telephone numbers of any and all witnesses, of whom this Defendant is aware having knowledge of the events made the subject of this lawsuit.

Response: The Defendant objects to this Interrogatory because it is vague, overly broad, unduly burdensome and seeks confidential information about individuals who may not be parties to this lawsuit. Without waiving said objections, see Initial Disclosures, which may be supplemented from time to time. Defendant will also submit a Witness List in accord with Court's scheduling order.

5. Provide the names, last known addresses and telephone numbers of any and all witnesses from whom this Defendant has obtained statements which in any way concern the events made the subject of this lawsuit.

Response: This Defendant objects on the grounds of privilege, taken and/or prepared in anticipation of litigation, protected by the attorney-client privilege, work product and not subject to discovery.

6. Did the Plaintiffs apply for promotion to Battalion Chief? Is so, please state the Plaintiffs' current job titles and state whether or not the Plaintiffs applied for promotions to Battalion Chief positions in 2006, including the dates of their applications, and the dates that any final decisions were made with regard to their applications.

Response: Yes; Fire Lieutenant; Plaintiffs applied on February 21, 2006.

7. Provide the names, addresses, and telephone numbers of any and all individuals who received Battalion Chief promotions during the year 2005 and 2006, including for each the pre-promotion job title and length of time of employment with the City of Auburn Fire Department.



Response: Joseph Lovvorn, Matthew Jordan and Rodney Hartsfield were promoted to Battalion Chief in May 2006. Each employee had previously been a Fire Lieutenant. Joseph Lovvorn, was a Student Firefighter from January 12, 1995 to August 31, 1999. Lovvorn was hired as a regular full-time employee in the Fire Division on September 1, 1999. Matthew Jordan was a Student Firefighter from June 12, 1995 to August 1, 1997. Jordan was hired as a regular full-time employee in the Fire Division on August 1, 1997. Rodney Hartsfield was a Student Firefighter from June 10, 1996 to May 31, 1999. Hartsfield was hired as a regular full-time employee of the Fire Division on June 1, 1999.

8. If Plaintiffs were denied Battalion Chief promotions in 2006, please state in great detail all reasons why the Plaintiffs were denied those promotions.

Response: The Defendant objects as overly broad, to the form and to the extent it implies Plaintiffs were qualified to be promoted to Battalion Chief; but without waiving said objections while Plaintiffs were eligible to participate in the Battalion Chief assessment process they failed to score high enough on the written test to proceed in the process.

9. Please state the Plaintiffs' wages currently, in February 2006 and August 2005.

Response: Eddie Ogletree: current: \$4,630.71 (Grade 18, Step 11); February, 2006: \$4,237.75 (Grade 18, Step 10); August, 2005: \$4,114.21 (Grade 18, Step 10). Gerald Stephens: current \$4,495.83 (Grade 18, Step 10); February, 2006: \$4,114.32 (Grade 18, Step 9); August, 2005 \$3,994.50 (Grade 18, Step 9).

10. Provide the names, last known addresses and telephone numbers of any African Americans who have been employed by the City of Auburn Fire Division, including job title, within the last (10) ten years.

Response: The Defendant objects to this Interrogatory as overly broad, unduly burdensome, requests privileged confidential and non-discoverable information about current or former employees and is not designed nor reasonably calculated to lead to the discovery of relevant evidence. Without waiving said objections, African Americans employed and available for regular duty by the City of Auburn Fire Division within the last (10) years are: Team Leader, now Lieutenant Eddie Ogletree, Lieutenant Gerald Stephens, Fire Fighter Christopher Turner. Jeremy Patterson, William Thompkins, Arkelle Matthews and Jon Oni were Student Fire Fighters.

11. Provide the names, last known addresses and telephone numbers of any and all African Americans employed by the City of Auburn Fire Division in February 2006, including with each their job titles.

Response: The Defendant objects to this Interrogatory as it requests confidential, privileged and non-discoverable information about current or former employees and is not designed nor reasonably calculated to lead to the discovery of relevant evidence. Without waiving said objections, African Americans employed by the City of Auburn Fire Division in February 2006 and their job titles: Eddie Ogletree – Fire Lieutenant; Gerald Stephens – Fire Lieutenant; Christopher Turner – Firefighter; and Jon Oni- Student Fire Fighter.

12: State in detail the written requirements for the Battalion Chief job that were in effect in February 2006.

Response: See attached job description.

13. State in detail the time and exact reasons why passing a written test became a requirement for the Battalion Chief position.

Response: The Defendant objects to the form of this Interrogatory, objects as vague, ambiguous and overly broad; without waiving said objections a written test was required for the Battalion Chief position so applicants could demonstrate their basic knowledge about the various facets of the fire service.

14. For any tests referenced in the previous Interrogatory response, please state the name of those test and the name of the company that administered and graded those tests.

Response: The Defendant objects to the form of this Interrogatory, objects as vague, ambiguous and overly broad. Without waiving said objections, the test was named Battalion Chief, the test was administered by the City of Auburn and CWH Research, Inc.; and graded by CWH Research, Inc.

15. State whether or not any of these Defendants have instituted legal action against any company responsible for administering and grading the test required for the Battalion Chief promotion and/or whether any of these Defendants are currently considering litigation against these companies.

Response: Yes.

16. If litigation has begun pursuant to the company's referenced in the previous Interrogatory, please state in detail the legal basis upon which those claims are asserted.

Response: See City's Third Party Complaint attached to its Motion to File Third Party Complaint.

17. Please state in detail the requirements of the Battalion Chief job prior to February 2006 and how if at all those requirements changed in 2006.

Response: See attached job description.

18. Provide the test scores of all applicants for the February 2006 Battalion Chief promotion, including the name and race of the individual.

Response: Defendant objects on the grounds of privilege, confidentiality, not subject to discovery and proprietary; but, without waiving said objections, will be made available at a mutually agreeable time and place pursuant to a confidentiality agreement acceptable to the City.

19. State in detail any and all disciplinary action, written, verbal or otherwise taken against the Plaintiffs by these Defendants within the last (10) ten years, and stating the reasons for such disciplinary action.

Response: The Defendant objects to this request as overly broad and seeks information not designed nor reasonably calculated to lead to the discovery of relevant evidence. However, without waiving said objections, based on information and belief, Ogletree has no disciplinary actions in his file. Stephens has one on July 27, 1997 for negligence for not putting equipment back on the truck. A nozzle fell off and a car ran over it causing damage.

20. Provide the names, last known addresses and telephone numbers of any and all witnesses this Defendant intends to call at the trial of this case.

Response: The Defendant will submit a Witness List in accord with the Court's scheduling order.

21. Provide the names, addresses and telephone numbers of any and all expert witnesses this Defendant has consulted with and/or whom this Defendant intends to call at the trial of this case.

Response: The Defendant objects to responding as to experts, if any, with whom it has consulted as privileged, not subject to discovery, work-product and beyond the bounds of discovery. As for any expert this Defendant intends to use at trial, it will comply with the Court's scheduling order.

22. Provide any video or audio tape in the possession of the Defendant which this Defendant contends to depict the Plaintiffs.

Response: The Defendant objects to this Interrogatory as vague, overly broad, and ambiguous, not limited in time, place, or event, privileged, not subject to discovery, and not designed nor reasonably calculated to lead to the discovery of relevant evidence.

23. Provide the case style, including number and court system, for any lawsuits filed against the City of Auburn Fire Department or the City of Auburn alleging claims of racial discrimination within the last (5) years.

Response: The Defendant objects to this request as overly broad, unduly burdensome, not designed or reasonably calculated to lead to the discovery of relevant evidence, and equally available to Plaintiffs.

**[SIGNATURES ON FOLLOWING PAGES]**

CITY OF AUBURN

By: \_\_\_\_\_  
As its: \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF \_\_\_\_\_

Personally appeared before me, \_\_\_\_\_, who acknowledged that he/she in capacity as \_\_\_\_\_ of said City of Auburn executed the foregoing instrument based on information and belief unless specifically indicated, these responses are not based upon the personal knowledge of the undersigned who is the representative designated with full authority as and for the act of same after being informed of the contents thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office on this \_\_\_\_ day of April, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

Objections signed for Defendant by its undersigned attorney.

/s/ *Randall Morgan*

Randall Morgan [8350-R70R]  
Elizabeth Brannen Carter [3272-C-38-E]  
**HILL, HILL, CARTER, FRANCO,**  
**COLE & BLACK, P.C.**  
425 South Perry Street  
Montgomery, Alabama 36101-0116  
(334) 834-7600  
(334) 263-5969 facsimile  
Rmorgan@hillhillcarter.com  
Counsel for Defendant

**CERTIFICATE OF SERVICE**

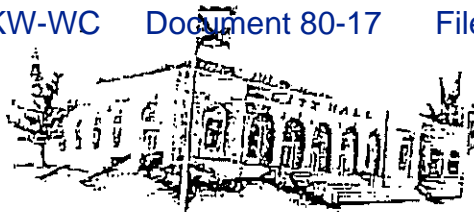
I Hereby Certify that I have this date served a true and correct copy of the foregoing VIA E-Mail and U.S. Mail to: Richard F. Horsley, Esquire (rfhala@cs.com) this the 4<sup>th</sup> day of April 2008.

/s/ *Randall Morgan*

Of Counsel

## **EXHIBIT P**





## City of Auburn

Home of Auburn University

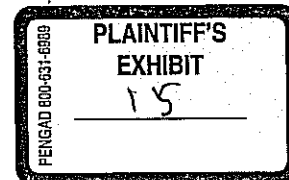
Friday May 12, 2006

William James  
City of Auburn, Public Safety Director  
161 North Ross Street  
Auburn, Alabama 36830

Dear Director James,

On April 21, 2006 a grievance was filed in reference to the promotional process for Battalion Chief, which started Monday April 10, 2006. According to the division chain of command the grievance was addressed first to the Deputy Fire Chief and second, the Deputy Director of Fire Operations. A written response was given on Friday April 28, 2006 and Monday May 8, 2006 to all participants of the formal grievance. Due to the unsatisfactory response from the Deputy Fire Chief and the Deputy Director of Fire Operations we chose to address the same concerns to you. Our concerns are listed below, but not limited to, the following:

- the written exam
- no time in grade policy
- no accumulative point system
- inconsistency of past promotional procedures.



Previously, we have asked that certain written exams be reviewed. Thus far we have received Candidate Feedback Reports, which does not fully explain the information we have requested. We are very concerned which questions were removed and to verify that everyone participating in the exam were equally graded. Understand there are other concerns that may arise from further discussions pertaining to this grievance. In closing we look forward to your immediate response.

Company Officers,

Horace Clanton

Eddie Ogletree

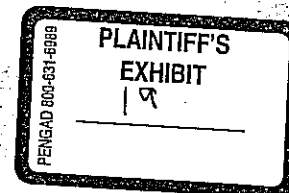
Gerald Stephens

## **EXHIBIT Q**



City of Auburn

Home of Auburn University



April 28, 2006

Lt. Horace Clanton  
359 East Magnolia Avenue  
Auburn, AL 36830

Dear Lieutenant Clanton:

I have received your letter requesting a review of the recent Battalion Chief's assessment and written exam. Specifically you have raised four questions for review and I will try to answer what I can. Item one is the review of the written exam. The exams were reviewed by CWH staff for accuracy of grading and to resolve any challenged questions. The City of Auburn has requested CWH provide a written review to the candidate of their exams. This may take a several days to obtain. Included in this review letter will be information about the number of questions answered correctly and incorrectly, what category they are in (knowledge or situational judgment), and a section on questions that were reviewed and how they were resolved. Again this material is being provided to you and may take some time before it is available.

The second and third items are similar in nature and it should be noted that no time-in-grade or cumulative point system exists within the fire division at this time. The only policy in this area states that probationary career employees may not assess for higher positions. A concern CWH had was that some of the candidates would not be prepared for the job of Battalion Chief based on their experience and rank. However, because our current advancement criteria permitted anyone to apply, anyone not a probationary employee was allowed to participate. In the near future, we will be reviewing the criteria required in order for an employee to participate in a future promotional process. As you know, the career development plan currently being developed addresses those criteria.

The fourth item I would ask you to elaborate on and state what you believe to be inconsistent about the promotional practices. I am unsure what you wish to discuss and would like to know more before I respond.

I would also suggest that you wait until the report from CWH is received and you have chance to review it. If you wish to file a grievance after receiving that information, you will have seven days of receipt of the report to file. Please let me know how I can help in this matter and I will be happy to assist you with any questions or requests for information.

Sincerely,

Lee Y. Lamar Jr.  
Deputy Fire Chief

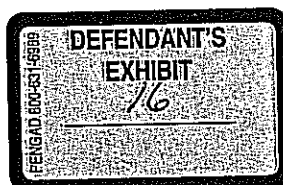
## **EXHIBIT R**



## City of Auburn

Home of Auburn University

April 14, 2006



Eddie Ogletree  
106 Pioneer Dr.  
La Grange, GA 30240

Eddie:

On Monday, April 10, 2006, you sat for the Battalion Chief written test. As you are aware, a score of 70 or above on the written test was necessary to advance to the assessment center portion of the promotion process. We regret to inform you that CWH has returned the test scores and your score is 63.81. Because you did not pass the written test, you are ineligible to participate in the assessment center.

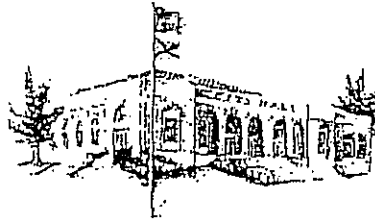
We appreciate your interest in promotional opportunities with the City of Auburn and hope that you continue to seek them in the future. If you should have any questions, feel free to contact me at (334) 501-7245.

Sincerely,

*Stephanie L. King*

Stephanie L. King  
Senior Human Resources Generalist

Ogletree-|| Disclosures



## City of Auburn

Home of Auburn University

April 14, 2006

Gerald Stephens  
828 Cahaba Dr.  
Auburn, AL 36830



Gerald:

On Monday, April 10, 2006, you sat for the Battalion Chief written test. As you are aware, a score of 70 or above on the written test was necessary to advance to the assessment center portion of the promotion process. We regret to inform you that CWH has returned the test scores and your score is 60.95. Because you did not pass the written test, you are ineligible to participate in the assessment center.

We appreciate your interest in promotional opportunities with the City of Auburn and hope that you continue to seek them in the future. If you should have any questions, feel free to contact me at (334) 501-7245.

Sincerely,

Stephanie L. King  
Senior Human Resources Generalist

Ogletree-|| Disclosures

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## **EXHIBIT S**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual;  
GERALD STEPHENS, an individual

Plaintiff,

vs.

CITY OF AUBURN, et al.

Defendants,

CIVIL ACTION NO:  
3:07-cv-867-WKW

AFFIDAVIT OF GERALD STEPHENS

My name is Gerald Stephens, and I am an adult and competent to testify. I have personal knowledge of the matters contained within this Affidavit.

I am one of the Plaintiffs in the above styled cause of action.

I submitted a grievance to the City of Auburn Fire Department in 2005. The grievance surrounded what I believed to be unfair and discriminatory promotional practices by the City of Auburn Fire Department. The attached Exhibit contains the actual grievance and the City's initial responses to that grievance. The Exhibit also contains a follow up response from me.

After submitting this grievance, then Chief Larry Langley called me and came to my home in order to deliver a written response to my grievance. While at my home, Chief Langley specifically told me that if I continued with this discrimination grievance there would be a "red flag" next to my name with the City of Auburn. I interpreted this to mean that the City would use my grievance against me concerning promotional opportunities in the future.

The matters contained in this Affidavit are true and correct to the best of my knowledge.



Gerald Stephens  
Gerald Stephens

SWORN to and SUBSCRIBED before me on this 2nd day of September, 2008.



State of Alabama  
County of Lee

Rachel B. Stephens  
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 6, 2012  
BONDED THRU NOTARY PUBLIC UNDERWRITER

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 6, 2012  
BONDED THRU NOTARY PUBLIC UNDERWRITER



## City of Auburn

Home of Auburn University

Fire Lieutenant Gerald D. Stephens  
Auburn Fire Division  
359 East Magnolia Avenue  
Auburn, Alabama 36830

Mr. Larry Langley  
Deputy Public Safety Director of Fire Operations  
Tuesday January 18, 2005

Dear Sir,

The purpose of this letter is threefold. First and foremost, I am aware of the importance to follow the chain of command within the Auburn Fire Division. I have followed the proper chain of command and requested the assigned shift commander, Team Leader Horace Clanton, to deliver this letter to you. However, I think it is of great interest that I share my intentions with you at this time. Second, I would like to speak to you about previous events, presently, two in particular. One involves the Auburn Fire Division temporary assignment of Shift Commander/Battalion Chief for A-Shift. The other involves the promotional position of the Auburn Fire Division Training Officer. Thirdly, as a City of Auburn employee I have decided to engage in Grievance Procedures in accordance to the City of Auburn Personnel Policies (1999, Section VIII).

The grievance being pursued is the result to interpretation of alleged discrimination and unfair treatment of specifications and distinguishing features of the class Fire Lieutenant. Also being pursued is interpretation of alleged discrimination and unfair treatment with notification and eligibility of position vacancy for the division position of training officer (Personnel Policies-Recruitment and Selection-Section II).

Upon request, I would like to make an appointment with you to discuss the events mentioned. If possible, for confirmation purposes, I request to be contacted 48 hours before the scheduled appointment explaining what time to be present. Also I request the appointment to take place in the small or medium conference room of the City of Auburn Public Safety Building. Upon doing so I will make the necessary provision to meet with you at the scheduled time. I appreciate your attention and patience with this matter. I look forward to your written response.

Thank You,

A handwritten signature in black ink, appearing to read "G. Stephens", is written over the typed name.

Gerald D. Stephens

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## City of Auburn

Home of Auburn University

To: Gerald Stephens

From: Larry Langley  
Deputy Public Safety Director of Fire Operations

Date: January 19, 2005

Re: Grievance

I received your letter dated January 18, 2005, in which you asked about the position of Training Officer and the alleged discrimination and unfair treatment of specifications and distinguishing features of the class Fire Lieutenant.

As you know, the City conducted a classification and compensation study using Condrey and Associates, a consulting firm in these studies. Condrey and Associates recommended that the job of Training Officer be assigned to pay grade 20, and that was where the job has been placed. Because this was a reclassification of position, (Section 11.06 paragraph 4 page 45 of the City of Auburn Personnel Policies) it was not handled as a promotion.

The Training Officer position was a lateral move from Team Leader to Training Officer several years ago with no pay grade change or increase in pay. With the creation of this position we were able to promote another Team Leader to fill the vacant opening. With the reclassification of this position it adds another slot in the rank structure and in the future this would be a promotion.

As you are well aware Battalion Chief Brown has come down with an unexpected illness and had to have surgery for cancer and Battalion Chief Leverette has had surgery on his ankle leaving the Fire Division without a Battalion Chief on A- Shift and Battalion Chief Lawrence filling in on C- Shift until the return of Battalion Chief Leverette. Battalion Chief Garrett and Lawrence has been filling on A- Shift during the Christmas and New Year Holidays so it would not interfere with anyone's scheduled time off during holidays. Now that the holidays are over and still unsure when Chief Brown and Chief Leverette will be able to return to work a decision was made by upper management and myself to move the Senior Officer to Temporary Battalion Chief to cover A-Shift until the return of Chief Leverette or Chief Brown. Horace Clanton was promoted to Team Leader on

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January 5, 1993 making him the Senior Officer in the division not including the Battalion Chiefs.

The Job Description for Team Leader and Lieutenant (effective date: June 1, 2004) has no distinguishing features or specifications separating the two classes. The positions are equal in rank requiring the same job duties. The decision was based on seniority of the senior officers. You were promoted to Lieutenant on April 7, 1996 making Team Leader Clanton the Senior Officer by three years therefore there was no discrimination towards the class of Fire Lieutenant.

You have requested a meeting in the Public Safety to discuss the events as mentioned. If you feel you still want to meet to discuss the grievance I will schedule a time for the meeting.



## City of Auburn

Home of Auburn University

Gerald D. Stephens  
Auburn Fire Division Fire Lieutenant  
359 East Magnolia Drive  
Auburn, Alabama 36830

Mr. Larry Langley  
Deputy Public Safety Director of Fire Operations  
Wednesday January 26, 2005

Dear Sir,

I received the letter of response dated January 19, 2005. Upon delivery I thanked the assigned shift commander, Team Leader Clanton, and I appreciate the prompt response by way of the Division's chain of command.

In response to the letter received, I am aware of the consulting firm Condrey and Associates and the classification study conducted by the City of Auburn. In reference to the reclassification of the Training Officer position (Section 11.06, 4. / City of Auburn Personnel Policies) I have the following questions:

1. Although the Training Officer position was not handled as a promotion, as stated in your letter of response, what is a reclassification that involves a pay grade change from 18 to 20 within the Auburn Fire Division?
2. Was there a Job-Position Classification Plan for Training Officer (Section 10, page 38, City of Auburn Personnel Policies) other than the recommendation given by Condrey and Associates?
3. Prior to the assignment of the Training Officer position where was the posting of the current job vacancy (Section 2.01) and what was the closing date?
4. Was the Training Officer position available for current city employees ("In-House Only") and/or open to the public via the Alabama State Employment Service?
5. Relating to current city employees, what position/title was eligible for the Training Officer position within the Auburn Fire Division (Section 2.02)?
6. Relating to the job status of Training Officer, was it a Regular/Full-Time, Temporary/Full-Time, Temporary/Part-Time (etc.) position?
7. What was the Date of Announcement for the Training Officer position?

Also in the letter of response it stated that the Training Officer position was a lateral move from Team Leader several years ago with no pay grade change or increase in pay. Another Team Leader was promoted to fill the vacant opening with the creation of training officer and this added another slot in the rank structure. This leads to further questions. Was the Fire Lieutenant position included or involved in the lateral move to Training Officer?

I am very aware of the health issues the Division is experiencing with two Shift Commanders/Battalion Chiefs assigned to "A" and "C". Presently, I am aware that one Battalion Chief has been assigned to fill the Shift Commander position on "C" shift. I am also aware that two Battalion Chiefs rotated Shift Commander duties and responsibilities on "A" Shift, starting December 15, 2004 and ending January 13, 2005. As scheduled and assigned, the two Battalion Chiefs worked 24-hour shifts on weekends and 15-hour shifts on weekdays. Each hour worked was documented and forwarded as overtime pay status.

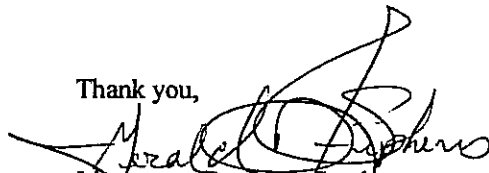
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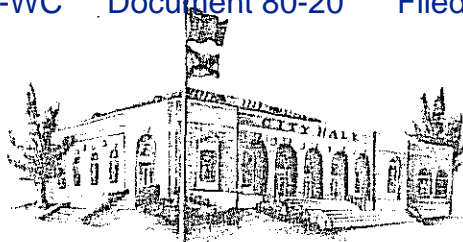
Gerald D. Stephens / Continued Grievance / January 26, 2005

If I may ask, Mr. Langley, what is a senior officer in the Auburn Fire Division? Presently, what is the division rank structure and what slot is Fire Lieutenant located? As we know, the Division's Team Leader position was created as a temporary assignment, filled by regular firefighters and contingent on the continuation of the Student Firefighter Program. In 1996 three firefighters of the Auburn Fire Division applied and competed for the Fire Lieutenant position by way of an outside departmental assessment center. As you are well aware I was one of the three. In this case, Mr. Langley, what was the Division's Fire Lieutenant position created as? Please explain any, if not all, previous promotional competitive/testing procedures for the Team Leader position since June 20, 1997. One other question, Mr. Langley, pertains to the upper management who assisted with selecting the senior officer to cover "A" Shift at the Auburn Fire Division. Would you please provide the position/title of the involved management and the number of participants in the selection?

In closing, I did request a meeting to discuss the events mentioned in my first grievance letter. If you recall upon three past interpretations, when I filed and initiated the procedures and presented to you my written grievance, you scheduled a meeting(s) to discuss matters at hand and never sent a response letter. For the record I have never received a response letter pertaining to past grievances filed, that is until now. So, at the present time, I think a meeting with you is not mandatory. But, due to my discomfort and continued dissatisfaction, I consider the grievance, filed January 18, 2005, still active. I also request that future discussions, between you and I, be conducted formally in a written response. Again, I appreciate the attention and prompt response.

Thank you,

  
Lieutenant Gerald D. Stephens



## City of Auburn

Home of Auburn University

To: Gerald Stephens

From: Larry Langley *W*  
Deputy Public Safety Director of Fire Operations

Date: February 1, 2005

Ref: Grievance

I received your letter dated January 26, 2005 in reference to the reclassification of the Training Officer position and the Senior Officer in the Auburn Fire Division.

As Stated in my letter to you on January 19, 2005 the City conducted a classification and compensation study using Condrey and Associates, a consulting firm in these studies. The City implemented the results of the study in March of 2004 with most employees getting a pay increase and some jobs were reclassified to a different pay grade. The appeals process for anyone wanting to appeal the results of a job classification ended in August 2004. Your grievance on the Training Officer reclassification should have been done during that time period. Since the seven-day period for a grievance to be file has past, your grievance will not go forward on the Training Officer reclassification.

In response to your question of what is a senior officer in the Auburn Fire Division. The senior officer is the officer with the most time in grade in this position. The Team Leader and Fire Lieutenant are equal in rank and perform the same job duties. As stated in the previous letter dated January 19, 2005 Horace Clanton was the senior person in this class and moved to the temporary assignment of Battalion Chief. The decision was made by me and Bill James (Public Safety Director), after consulting with Steve Reeves (Human Resource Director).

This is the second response to your grievance in the last 12 calendars days. Your second letter should have been sent to the Public Safety Director Bill James in accordance with the City of Auburn Personnel Policies. If you wish to appeal this matter to Public Safety Director Bill James you have seven days from the date of receipt of this letter to do so.

## **EXHIBIT T**



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual;  
GERALD STEPHENS, an individual

Plaintiff,

vs.

CITY OF AUBURN, et al.

Defendants,

CIVIL ACTION NO:  
3:07-cv-867-WKW

AFFIDAVIT OF EDDIE OGLETREE

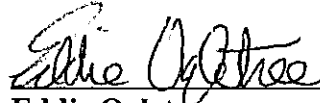
My name is Eddie Ogletree, and I am an adult and competent to testify. I have personal knowledge of the matters contained within this Affidavit.

I am one of the (2) two Plaintiffs in the above styled cause of action. The document attached hereto as Exhibit A is my City of Auburn Performance Appraisal Form dated July 10, 2007. This represents my performance appraisal for the time period beginning July 1, 2006 and ending July 1, 2007. This is my yearly appraisal for 2007. On page 5 of the Appraisal I was scored pursuant to my performance of the duties of Battalion Chief in the absence of a Battalion Chief. I received a score of (7) seven which meets the job requirements "with distinction". In the comment section of my appraisal, it states that in the absence of the Battalion Chief, Lieutenant Ogletree often fills in as the Shift Commander where he is responsible for commanding the entire shift. Lieutenant Ogletree is (1) one of the (2) two Lieutenants currently on B-Shift with the knowledge and experience to perform the duties of the Battalion Chief, in his/her absence. He used his years of knowledge and experience to resolve all emergency scenes

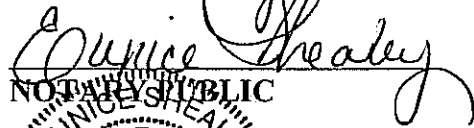
in an exemplary manner. He also handles all non emergency shift duties in an exceptional fashion; and proves time and again why he is a superior supervisor, and someone who can be trusted to safely supervise the entire shift.

Exhibit A is a true and accurate copy of the Performance Appraisal I received in 2007.

The matters contained in this Affidavit are true and correct to the best of my knowledge.

  
Eddie Ogletree

SWORN to and SUBSCRIBED before me on this 29<sup>th</sup> day of August, 2008.

  
NOTARY PUBLIC  
EUNICE SHEALY  
My Commission Expires Nov 6, 2011  
GEORGIA  
NOV. 6, 2011  
PUBLIC  
TROUP COUNTY

## City of Auburn - Performance Appraisal Form

JOB TITLE: Lieutenant

FD/3

DEPARTMENT: Public Safety, Fire Division

FLSA Designation: Non-exempt

PAY GRADE: 18

EFFECTIVE DATE: June 1, 2004

JOB SUMMARY: This position is responsible for supervising the activities of personnel assigned to a fire station and involved in fire suppression and rescue work.

### Date

Date: 7/10/2007

Rating Period

From:

7/1/2006

To:

7/1/2007

### Identification

Name: Eddie Ogletree

Rater Name: Rodney Hartsfield

Rater Title: Battalion Chief

Department: Public Safety / Fire Division

### Total Score

Sum of domain score = 5.85

### Signatures

This report is based on my observation and knowledge of both the employee and the job.

Supervisor

Date

Reviewer

Date

My signature indicates that I have reviewed this appraisal. It does not mean that I agree with the results.

Employee

Date

COPY

**Rating Scale Key**

1	2	3	4	5	6	7	8	9	NA
Falls to meet.....Almost meets Job Requirements			Barely meets.....Fully meets Job Requirements			Meets with distinction.....Exceeds Job Requirements			Not Applicable

Any score below or above 4-5-6 requires explanation/justification in the "comments" section.

**Domain One: Performs Fire and Rescue Duties ( 25%)**

1) Effectively responds to and coordinates the activities of the firefighting and rescue personnel and equipment at fire and emergency scenes.

Score: 6

Comments:

Lieutenant Ogletree responds to 911 calls in a professional and timely manner.

2) Effectively commands fire scenes until relieved by a senior officer: assesses emergency situations; determines suppression methods; determines the need for additional personnel and equipment; preserves evidence of arson; ensures the security of a structure prior to leaving the scene.

Score: 7

Comments:

Lieutenant Ogletree uses his years of knowledge and experience to assess and mitigate any emergency scene. Lieutenant Ogletree remains calm and professional on all emergency calls, and he effectively follows the command structure. He performs and supervises on scene details such as fire suppression, ventilation, and search and rescue in a timely and professional manner. He is efficient, tactically sound, and provides leadership to his crew with little supervision from the Battalion Chief. One such example of this performance occurred on April 14, 2007 when a strong thunderstorm passed through Auburn. The Fire Department had multiple emergency calls, occurring simultaneously making it impossible for the Battalion Chief to respond to every call. Lieutenant Ogletree mitigated many of these emergency calls without assistance from the Battalion Chief, and did so in an exemplary fashion. Lieutenant Ogletree supervised scenes during this storm, and numerous other emergency scenes throughout the evaluation cycle, in an exceptional manner.

3) Develops effective pre-fire plans for use in emergency situations..

Score: 6

Comments:

Lieutenant Ogletree performs pre-fire plans in a professional manner. While conducting pre-fire plans, he uses the opportunity to better familiarize himself and his crew with structures within the city. He always completes assigned pre-fire plans in a timely manner.

4) Effectively performs and supervises first responder duties as necessary.

Score: 5

Comments:

Lieutenant Ogletree uses his knowledge to administer first aid when necessary and to know when someone needs more extensive care.

5) Effectively responds to automatic fire alarms.

Score: 6

Comments:

Lieutenant Ogletree uses his years of experience to respond to all calls, emergency or non-emergency, in a professional and timely manner.

6) Effectively tests equipment and apparatus as required.

Score: 6

Comments:

Lieutenant Ogletree consistently maintains accountability of the apparatus and equipment he is responsible for.

Total Points 36 divided by number of rated Items 6 = 6.00 X 25 % = 1.50

## **Domain Two: Performs Supervisory Duties (45%)**

1) Effectively oversees daily station operations.

Score: 6

Comments:

Lieutenant Ogletree continuously ensures that daily and shift assignments are completed in an incomparable manner. Lieutenant Ogletree's station continuously looks good, all paper work is accomplished, and he does a great job maintaining accountability of all things he is responsible for.

2) Effectively supervises personnel in the maintenance of equipment and the station.

Score: 6

## Comments:

Lieutenant Ogletree ensures all apparatus and equipment he is responsible for is maintained in a high state of readiness for firefighting operations.

3) Effectively directs training activities of assigned personnel.

Score: 7

## Comments:

Lieutenant Ogletree uses his vast level of knowledge and experience to organize and conduct training for all B-shift personnel. He consistently uses this knowledge and years of experience to increase other personnel's knowledge of firefighting tactics. Lieutenant Ogletree has been assigned, along with another senior Lieutenant, as B-shifts training officer. He assist in creating a shift training schedule, ensures daily training is conducted for his personnel and the entire shift, and uses his level of knowledge and experience to provide a superior level of training for all B-shift personnel.

4) Effectively supervises, counsels, disciplines, and evaluates the performance of assigned fire officers.

Score: 5

## Comments:

Lieutenant Ogletree counsels, disciplines, and evaluates his crew in accordance with the standards of the organization.

5) Accurately inspects fire station, equipment, supplies, and personnel.

Score: 6

## Comments:

Lieutenant Ogletree maintains a high level of appearance for the station, apparatus, and his crew.

6) Prepares and maintains accurate reports on all shift activities.

Score: 5

## Comments:

Lieutenant Ogletree ensures all information for records and reports are entered into the computer.

Total Points 35 divided by number of rated items 6 = 5.83 X 45 % = 2.63

### Domain Three: Related Duties (30%)

1) Attends training seminars, conventions, and meetings.

Score: 5

## Comments:

Lieutenant Ogletree has attended on-shift courses, and has also received Introduction to Technical Rescue and Fire Officer II certifications from the Alabama Fire College during this evaluation cycle.

2) Effectively presents fire safety education classes to local school and community groups; conducts fire drills.

Score: 5

Comments:

Lieutenant Ogletree assists the citizens of the City of Auburn in being aware of fire safety. He conducts fire drills at local schools and participates with the smoke trailer and truck displays at public functions.

3) Effectively performs the duties of the Battalion Chief in his/her absence.

Score: 7

Comments:

In the absence of the Battalion Chief, LT Ogletree often fills in as the Shift Commander where he is responsible for commanding the entire shift. Lieutenant Ogletree is one of two Lieutenants currently on B-shift with the knowledge and experience to perform the duties of the Battalion Chief, in his/her absence. He uses his years of knowledge and experience to resolve all emergency scenes in an exemplary manner. He also handles all non-emergency shift duties in an exceptional fashion; and proves time and again why he is a superior supervisor, and someone who can be trusted to safely supervise the entire shift.

4) Performs other related duties as assigned.

Score: 6

Comments:

Lieutenant Ogletree continuously performs any duty assigned to him with professionalism and devotion. He is always willing to assist in any work needing done.

Total Points 23 divided by number of rated items 4 = 5.75 X 30 % = 1.72

### Performance Discussion and Summary

1) Does the employee report for and remain at work as required?

☒ Yes

☐ No

If no, please explain:

2) Does the employee follow instructions and observe work rules and personnel policies?

☒ Yes

☐ No

If no, please explain:

3) Does the employee interact effectively with co-workers on the job?

☒ Yes

☐ No

If no, please explain:

4) Does the employee perform the job in compliance with safety practices appropriate to the assigned work environment?

☒ Yes

☐ No

If no, please explain:

5) Does the employee exhibit proper respect for and use of City property?

☒ Yes

☐ No

If no, please explain:

6) Does the employee have the knowledge, skills, abilities, and other qualifications needed for successful job performance?

☒ Yes

☐ No

If no, please explain:

7) Describe any specific actions employee needs to take to improve performance.

Lieutenant Ogletree needs to continue his career development by taking advantage of all schools and training that will allow him to keep up with firefighting and supervisory tactics. It is recommended that he continues with the Alabama Fire Officer courses by taking Fire Officer III. He should also continue on with the Alabama Instructor courses by taking Instructor III. Lieutenant Ogletree should also take advantage of any tactical, leadership, and management classes offered at the Alabama Fire College and the National Fire Academy. Lieutenant Ogletree must keep up with the ever-expanding growth of the City of Auburn by maintaining and increasing his knowledge on streets and numbers, business familiarization, and hydrant locations.

8) Summarize the employee's overall job performance.

Lieutenant Ogletree is an outstanding employee for the City of Auburn. He is dedicated and takes pride in the fire service. He is always willing to help citizens, fellow employees, or who ever may need assistance. He is a mentor and leader to his firefighters and peers, and always presents himself as a professional. Lieutenant Ogletree is a hard worker, an excellent supervisor, and a real asset to the City of Auburn.



## **EXHIBIT U**

STATE OF ALABAMA )  
COUNTY )

My name is Chris Turner and I am over the age of nineteen years, of sound mind, and have firsthand knowledge of the facts set forth.

I have been employed with the City of Auburn from 1987 to present. I was hired originally in 1987, part time. I was refused full-time by Ellis Mitchell. I was a party to the Hammock v. The City of Auburn, 1987 CV 680 E lawsuit and it was through the lawsuit that I was hired full-time.

I have endured numerous instances of negative comments related to my race and job status, specifically, I was told by Chief Langley in about 2002 that I would have trouble getting promoted because I had filed an EEOC charge in or about 2002. In 2005, I had to take Lieutenant's exam, which was a cut-off test. I did not make the cut-off. Four white fire fighters made the cut-off—but only one position was open in August. Instead of retesting for the next Lieutenant position, the City appointed from the four to the next open Lieutenant spot until all four whites were promoted to Lieutenant. I was not given a opportunity to apply for these positions. I was not assessed, as stated in para 12 of the 1991 Settlement Agreement, a copy of which attached. I complained to Chief Langley that they did not go through the assessment center in this promotion like stated in the 1991 Settlement Agreement. He said that he had nothing to do with it, *this time*, go see Stephanie King, Assistant Human Resource Director. She said, go see Larry Langley. I went back and he said, that this was a new process that they were starting. He said that it wasn't fair and he knew it wasn't fair.

All of the Team Leaders were promoted in February of 2006 to Lieutenant. There are no more Team Leaders. The Captains were appointed to Battalion Chief in 2005. There are no more Captains.

The student fire fighter program, from where the City of Auburn draws its fire fighters, is all white. There are approximately 70 to 80 student firefighters. They all attend college. They will compete for promotions to Battalion Chief and Lieutenant, with no time in grade. However, they have college experience which includes recent testing experience.

Chris Turner  
AFFIANT

8/24/08  
Date

SUBSCRIBED AND SWORN TO Sandra J. Hall  
ON THIS THE 24<sup>th</sup> DAY OF August, 2008

Sandra J. Hall  
NOTARY Public

NOTARY PUBLIC - STATE AT LARGE

MY COMMISSION EXPIRES: 02-19-2012

## **EXHIBIT V**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**EDDIE OGLETREE, an individual;  
GERALD STEPHENS, an individual**

**Plaintiff,**

**vs.**

**CITY OF AUBURN, et al.**

**Defendants,**

**CIVIL ACTION NO:**  
**3:07-cv-867-WKW**

## AFFIDAVIT OF HORACE CLANTON

My name is Horace Clanton. I am an adult, of sound mind and competent to testify. I have personal knowledge of the matters contained within this Affidavit and they are true and accurate to the best of my knowledge.

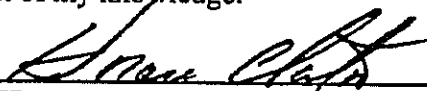
I am a Firefighter with the Auburn Fire Department. I am a white male. For many years, I have worked along side Eddie Ogletree and Gerald Stephens. Both of these men have the experience and knowledge to qualify for the Battalion Chief job which they applied for in 2006. Both of these men have served in that capacity on a fill in basis and have performed that job adequately and competently.

Prior to the 2006 Battalion Chief promotion, I was told on numerous occasions by now Fire Chief Lee Lamar and others at the City of Auburn that the Fire Department was developing a career development plan and that a firefighter would have to have at least 12 years of career firefighting experience in order to be eligible for the job of Battalion Chief. However, when the City of Auburn actually conducted the Battalion Chief promotion, they allowed Firefighters with far less than 12 years of career firefighting experience to apply. If the City of Auburn had

followed its proposed career development plan, only 6 applicants were actually eligible for the Battalion Chief promotion. Gerald Stephens and Eddie Ogletree both black males, would have been eligible for that promotion. Therefore, 2 of the 6 eligible Battalion Chief applicants would have been African Americans if the City had followed its proposed career development plan.

In 2005, a Battalion Chief was undergoing cancer treatment, and I was asked to fill in as a substitute Battalion Chief. Larry Langley was the Fire Chief at that time. Chief Langley asked me to make sure to be at work every day so that Gerald Stephens would not be in charge. He stated that other firefighters would not want to work for Gerald Stephens.

These matters are true and accurate to the best of my knowledge.

  
 Horace Clanton

SWORN to and SUBSCRIBED before me on this 2<sup>nd</sup> day of September, 2008.

  
 NOTARY PUBLIC

My Commission Expires: 6/09

## **EXHIBIT W**

STATE OF ALABAMA )  
COUNTY )

My name is William Felton and I am over the age of nineteen years, of sound mind, and have firsthand knowledge of the facts set forth.

I was employed with the City of Auburn from 1974 to 1999. I was an original party to the Hammock v. The City of Auburn, 87 CV 680 E lawsuit. I sued because I was being denied a promotion to Lieutenant. Prior to 1987, I had been with the fire department for 13 years as a permanent firefighter. Prior to 1987, the City of Auburn used a "test" to make the Lieutenant promotions, along with evaluations, longevity, and streets and numbers. I never applied because I was black and Thomas Scott, Dexter Card and Jessie Strickand, all black had applied and did not get the promotion. The rumor at the fire stations was that the promotion process was fixed, and that is why I filed suit. As part of the settlement, I was promoted to Lieutenant. In order to keep the promotion, I had to fulfil the Lieutenant requirements within a certain time frame, which I did.

The lawsuit was settled and the promotion process changed to an assessment center where all Captains and Lieutenants had to be done through an assessment center. But, this stopped in 1996, after a black was promoted through the assessment center (Gerald Stephens) to Lieutenant.

I was a Lieutenant in 1993 (through the lawsuit) when a Captain position came open. The City of Auburn would not allow me and Dexter Card and Jessie Strickand take the Captain assessment, through the assessment center. I was told by then Firechief Blankenship that we could not take the assessment because we were not qualified. However, Larry Langley (white) took the assessment for Captain and was promoted, even though he was a regular firefighter—he jumped the Lieutenant's position, meaning, he jumped over me, Dexter Card and Jessie Strickand. Steve Reeves was the Human Resource Director at that time. So, even though Langley was allowed to bypass the Lieutenant position, we, the black Lieutenants were denied the opportunity to even apply.

Ronald Blankenship regularly used the N-word. Larry Langley referred to us black fire fighters as N-word. He said it regularly. Lee LeMar also used the N-word, regularly. All of them became Fire Chief.

From 1988 to 1997, the only new Lieutenants were myself, Thomas Scott, Dexter Card and Jessie Strickand and Gerald Stephens (who was promoted because of the 1996 lawsuit against the city).

In 1988 they started the Team Leader position. They did the job of Lieutenant. There were about 10 -12 Lieutenants back then. When they retired, or quit or were terminated, they were replaced by Team Leaders, who were white, except for Eddie Ogletree.



When I was there, there were no black officers higher than Lieutenant, out of at least, 80 firefighters. The number of black firefighters was never over 10%.

Chief Ellis Mitchell told me on numerous occasions, until he retired in 1987, that because I was black I would have probably have trouble because whites had said to him that they didn't want to "house" in the dormitory with a black man. I was called N-word by my fellow fire fighters regularly.

Willie C. Hall

AFFIANT

08-25-08

Date

SUBSCRIBED AND SWORN TO Sandra J. Hall  
ON THIS THE 25<sup>th</sup> DAY OF August, 2008

Sandra J. Hall

NOTARY PUBLIC - STATE AT LARGE

MY COMMISSION EXPIRES: 02-19-2012

## **EXHIBIT X**

City of Auburn

Wednesday May 24, 2006

Charles M. Duggan Jr.  
Acting-City Manager, City of Auburn  
144 Tichenor Avenue  
Auburn, Alabama 36830

Mr. Duggan,

On Friday April 21, 2006 a grievance was filed in reference to the promotional process for Battalion Chief with the Auburn Fire Division. According to the division chain of command the grievance was addressed, first-to the Deputy Fire Chief, second-the Deputy Director of Fire Operations and, third-to the Public Safety Director. A written response was given on Friday April 28, 2006, Monday May 8, 2006 and Wednesday May 17, 2006 to each participants of the formal grievance. Due to each response received from the described supervisor we now chose to address the same concerns to you. Our concerns are listed below, but not limited to, the following:

- the written exam
- no time in grade policy
- no accumulative point system
- inconsistency of past promotional procedures.

Thus far, we have asked that the Battalion Chief promotional exams be reviewed. We have received *Candidate Feedback Reports*, which we think do not fully explain the information we have requested about the written portion of the exam. It has been stated that *no time in grade or cumulative point system exist within the fire division. There is no time in grade policy and no cumulative point system. The Deputy Fire Chief and Deputy Public Safety Director for Fire Operations are working on a career ladder that would implement minimum requirements to test for and hold a particular rank in the Fire Division.*

As for consistency in promotional procedures it has been asked that we elaborate on and state what we believe to be inconsistent about the promotional practices. It has been stated that *the last promotion of "Shift Commander" which has been changed to "Battalion Chief" was in 1996-an assessment center was used with outside assessors for*

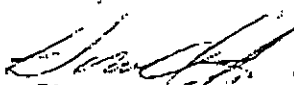
Wednesday May 24, 2006

*promotion to the position. It was further stated that two Shift Commander/Battalion Chief assessments have been conducted in the last ten years-a contracted professional company, known in the fire service, conducted a comprehension evaluation process that test each candidate on many of the daily requirements of the Battalion Chief Position.*

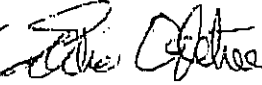
Due to each response received another concern has surfaced. If considerable time is taken to research and/or investigate previous, as well as, past hiring and promotional strategies for Auburn Fire Division (*rank structures: Career Firefighter, Team Leader/Lieutenant, Captain/Battalion Chief, Training Officer, Deputy Chief*) it will show the inconsistency we are stating in this grievance. No eligible African American firefighters have been promoted and none hired on the career level since April 7, 1996. A probationary career Firefighter was once promoted to a Company Officer position and probationary Team Leaders/Lieutenants were eligible to apply for upper management positions upon discovering that they meet current job descriptions and minimum qualifications. Senior Shift Officers have assumed duties of Shift Commander/Battalion Chief, on a consecutive role, at the discretion of the Deputy Director of Fire Operations within the Auburn Fire Division.

In a nutshell, we request a review of our grievance by you. Understand, other concerns have arisen from further discussions pertaining to this grievance and more may arise. In closing we look forward to your ethical and progressive response.

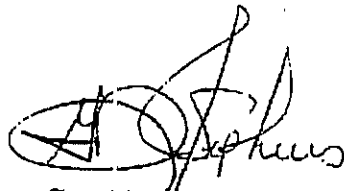
Company Officers,



Horace Clanton



Eddie Ogletree



Gerald Stephens

## **EXHIBIT Y**

RECEIVED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION: MAR 23 P 4 17

CHRIS E. TURNER,

Plaintiff,

vs.

CITY OF AUBURN, a municipality of  
The State of Alabama; LARRY LANGLEY,  
an individual; LEE LAMAR, an individual;  
BILL HAM, Jr., an individual; STEVEN A.  
REEVES, an individual; BILL JAMES, an  
Individual; DAVID WATKINS, an individual;  
CHARLES M. DUGGAN, an individual;  
and CORTEZ LAWRENCE, an individual;

Defendants.

CIVIL ACTION NO:

3:07cv162-MEF

JURY TRIAL DEMANDED

COMPLAINT

**I. JURISDICTION**

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1331, 1343; 42 U.S.C. 1983, as amended; 28 U.S.C. 2201 and 2202, and 42 U.S.C. 2000(e), et seq., Title VII of the Civil Rights Act of 1964, as amended, and the Fourteenth Amendment of the United States Constitution.

**II. PARTIES**

2. Plaintiff, Chris E. Turner, is a citizen of the United States and a permanent resident

of the State of Alabama.

3. Defendant, the City of Auburn, Alabama, is a municipality and governmental entity located in Lee County, Alabama. Plaintiff has been a full-time employee of Defendant City of Auburn since 1991 as a Firefighter, and presently is employed as a Firefighter-Station Officer and continues to be employed there in this capacity. Plaintiff began his employment on a full-time basis pursuant to the a 1991 Settlement Agreement, entered pursuant to Order entered in that certain action styled "Hammock v. The City of Auburn, Alabama, et al.", CV-87-690-E (hereinafter the "1991 Settlement Agreement and the "Hammock Case", respectively), wherein the City of Auburn hired Plaintiff as a full-time Firefighter, pursuant to ¶ 11 of the Order (hereinafter the "1991 Order"). A copy of the 1991 Settlement Agreement is attached hereto and made a part hereof as Exhibit "A".

4. Defendant City of Auburn is an employer within the meaning of 28 U.S.C. 2000, *et seq.*. All Defendants are citizens of the United States and permanent residents of the State of Alabama.

5. Defendant, Larry Langley (hereinafter "Langley"), has been the Chief of the City of Auburn Fire Department since 1997 and has had input and authority as a decision-maker with regard to the facts set forth herein.

6. Defendant, Lee Lamar (hereinafter "Lamar"), has been the Deputy Chief of the City of Auburn Fire Department since approximately 2003 and has had input and authority as a decision-maker with regard to the facts set forth herein.

7. Defendant, Steven A. Reeves (hereinafter "Reeves") has been the Human Resource Director of the City of Auburn Fire Department since some time in the 1980's and has had input and

authority as a decision-maker with regard to the facts set forth herein.

8. Defendant, Bill Ham, Jr. (hereinafter "Ham"), has been the Mayor of the City of Auburn since approximately 2000 and has had input and authority as a decision-maker with regard to the facts set forth herein.

9. Defendant, Bill James (hereinafter "James"), has been the Public Safety Director of the City of Auburn since approximately 2001 and has had input and authority as a decision-maker with regard to the facts set forth herein. Defendant Cortez Lawrence (hereinafter "Lawrence") is, and at all times pertinent hereto was, the Deputy Public Safety Director of the City of Auburn.

10. Defendants, David Watkins and Charles M. Duggan (hereinafter "Watkins" and "Duggan", respectively), were the City Managers of the City of Auburn at the time of the promotions identified and described herein and has had input and authority with regard to those promotions.

### **III. STATEMENT OF PLAINTIFF'S CLAIMS:**

11. Plaintiff brings the claims set forth herein pursuant to the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States under § 1983 and Title VII of the Civil Rights Act of 1964. Plaintiff filed two claims with the EEOC within the one-hundred and eighty day period and has received a Right to Sue Letter for each claim. This action is commenced within the required ninety day filing period. Copies of the Right to Sue Letters are attached hereto and made a part hereof as Exhibits "B" and "C". This action is commenced within two years of the actions complained of.



**COUNT ONE**

**RACE DISCRIMINATION IN PROMOTION: August 23, 2005**

12. On to-wit, February 15, 1991, in the 1991 Order, this Court ordered the Defendant City of Auburn to hire Plaintiff as a full-time Firefighter. When he was hired, he was a probationary Firefighter for one year. Plaintiff passed all of the requirements and became a Firefighter I. He remained a firefighter I for approximately seven years, and then was promoted to Firefighter II, with no pay increase.

13. Once a probationary Firefighter becomes a permanent Firefighter I, as Plaintiff did, he or she becomes eligible to apply for a Team Leader position. Plaintiff applied for the Team Leader position each time it became open once he became eligible, which was in 1992, up to the present date. Plaintiff was never promoted to Team Leader. Plaintiff is a black male, age 41. During this time period, the City promoted 21 Whites and one Black to the position of Team Leader. Plaintiff applied for all of these promotions/positions and received none.

14. Specifically, on August 23, 2005, Plaintiff applied for the Team Leader position and did not receive the promotion. The position was given to a white Firefighter.

15. On August 23, 2005, one opening for a Team Leader Position became available at Fire Station #1. The position was awarded to Jason Rawls, a white male, within one to two weeks of that date.

16. Additionally, three other white Firefighters were put on a waiting list. From this waiting list, all three white males received promotions to the Team Leader position which became available at various stations. These promotions were parceled out within a few weeks after August 23<sup>rd</sup>. None of the promotions were awarded to Blacks. Plaintiff was not awarded any of the positions.

17. Plaintiff was qualified to be a Team Leader because he was a permanent Firefighter II with over a decade of experience and expertise and had met all other Departmental requirements for the position.

18. Plaintiff has held the positions of Firefighter II, Fire-Officer I, Fire-Instructor, and is certified to command fires until the senior officer arrives on a scene, pursuant to his Incident Command System Certification. Furthermore, Plaintiff has certificates in Apparatus Operator/Pumper, Apparatus Operator/Aerial, Hazardous Materials Incident Commander, Building Construction For Fire Suppression Forces Principles wood and ordinary construction, EMT-Basic, Alabama Forestry Commission (brush fire training), National Wildland/Urban Firefighter Safety Certification, ISI safety, Commercial Drivers Licensing Program, Firefighter Safety and Survival, Emergency Vehicles Operations Course and defensive driving training, as well as thirty-two (32) hours of secondary education in fire-fighting courses.

19. Plaintiff has been a Station Officer for approximately ten (10) to fifteen (15) years. In 1995, Plaintiff began assuming supervisory responsibilities, as assigned, of all the fire stations. The job of the Station Officer is to manage a station when the Lieutenant is absent. In this position, the Station Officer must interact effectively with team members, senior officers and the public. He

has to instruct, plan, lead, communicate, be safe, manage and supervise. Plaintiff has ten to fifteen years of experience in this position.

20. Plaintiff was qualified to be a Team Leader on August 23, 2005. Although qualified, he was denied the promotion and the position was kept open and eventually given to white firefighters.

21. The promotees from the August 23, 2005 position were as follows: David Hines, Jason Rawl, James Gilbert and Clay Carson – all white males.

22. The 1991 Settlement Agreement specifically provided that promotions to Team Leader did not have to be determined through an outside assessment center, such as was required for filling Lieutenants' and Captains' positions, for the reason that the Team Leader "position" is not a classification as such, but is in fact an additional responsibility of a permanent Firefighter, as set forth more specifically herein below. The position does provide pay and grade as that of Lieutenant.

23. Thus, the City of Auburn employs the term "Team Leader" to promote white Firefighters to a grade *equal* to that of Lieutenant (Team Leaders were not Lieutenants). Team Leader determinations are made by in various ways, either by appointment from the Fire Chief, inside assessment by the Fire Chief, the Public Safety Director, other Team Leaders, including some former Captains, and sometimes, even by city administrators or merely by informing the permanent Firefighter of a promotion to Lieutenant pay grade (a raise of approximately three hundred dollars a month. These appointees, as stated above, were called Team Leaders, even though the term Team Leader is not an official classification.

24. Until August 23, 2005, all promotions to Team Leader were handled in the manner set

forth above.

25. Prior to August of 2005, Plaintiff was “passed over” for promotion by Defendants approximately twenty times. In or about 1994, Plaintiff became eligible for the position of Team Leader. He never received a promotion. Normally, Plaintiff was told that the reason he didn’t get the job was because he interviewed poorly. Plaintiff was interviewed many times, often by the same persons, yet continued to be passed over, and was always given the same reason – that he “interviewed poorly”. During this period of time, white Firefighters, with less experience, training and communication skills, continued to be promoted over Plaintiff.

26. Plaintiff’s formal evaluations demonstrate that he possesses the requisite knowledge, skills, abilities, and other qualifications needed for successful job performance as a Team Leader. He even performs in his current job, from time to time, the duties of Team Leader and also the higher position of Lieutenant. By way of example (and consistent with Plaintiff’s customary evaluations) is Plaintiff’s performance appraisal for March 7, 2006, attached hereto and made a part hereof as Exhibit “D”.

27. In 2002, Plaintiff filed a charge with the Equal Employment Opportunity Commission (hereinafter the “EEOC”) arising out of the failure of the City of Auburn to promote him to Team Leader. Plaintiff was offered the job of Team Leader during settlement negotiations through EEOC. However, the settlement was never finalized and Plaintiff filed a lawsuit against the City.

28. Following dismissal of the above lawsuit, the first Team Leader position to become available was August 23, 2005.

29. However, the August 24, 2005 position was not filled following customary procedures utilized in the past.

30. Following dismissal of the lawsuit, Defendant City of Auburn, in order to continue passing over Plaintiff for promotion, implemented a "written test" for the *first* time for the Team Leader position. The test was racially discriminatory and designed to keep Plaintiff from getting the job. It was an unlawful "cut-off" test, divided into several parts, the first of which was a written test with no questions related to requirements for the Team Leader position. Failure to pass the written test "cut off" the applicant from the remainder of the examinations.

31. Specific pertinent features of the written portion of the test are as follows:

(1) the written test was designed for application to promotion to Lieutenant, not for the Team Leader position. Team Leaders are not Lieutenants, nor do they have the same duties. The 1991 Settlement Agreement clearly designates the distinctions between Team Leader and Lieutenant.

(2) The written test was applicable to Lieutenant positions only and had no application to the Team Leader position.

(3) The application process was composed of five parts, as follows: (1) the written test, as hereinbefore described; (2) various scenarios; (3) writing skills; (4) fire tactics and (5) oral examination. As noted above, the written portion of the test, administered first, functioned as a "cut-off test", precluding the applicant from proceeding further if failed. The written exam was entitled "Examination 702 -- Lieutenant's Exam". The written exam was graded by designated personnel of the City of Auburn and the tests results were

shredded. Plaintiff was not allowed to see his test.

32. Plaintiff was advised that he failed the written examination and he was not allowed to proceed to the remaining parts of the application process, none of which carried the cut-off characteristics of the "written exam." Furthermore, all portions except the written test were "graded" by the City of Auburn with no objective measurement or standard as to passage or failure. There also was no physical requirement in the testing process, which is a provision of the 1991 Settlement Agreement. Defendant City of Auburn, however, used the physical fitness test in 2006 to deny Bobby Felton, an African-American, a position as a Firefighter with the City of Auburn.

33. Defendant City of Auburn has not hired a black permanent Firefighter since approximately 1996 and has only promoted two black Firefighters since 1996, manifesting a pattern and practice of avoidance in hiring Blacks. Every African-American promoted since 1974 has been the result of a lawsuit or a pending lawsuit.

34. No Firefighter has been hired since 1989 from the general public. All Firefighter positions have been filled through a program called the Student Program. Ninety-nine plus percent of the Firefighters employed through the Student Program are white. Students in the program are trained by Team Leaders.

35. As of this date, Whites are predominant in the Fire Department, in violation of the 1991 Settlement Agreement which states, in ¶ E, that the City may hire student firefighters without regard to the 1991 Order but may not discriminate in its hiring practices based upon race.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays for the following relief:

- A. Granting Plaintiff an order requiring Defendant to make Plaintiff whole by granting to him the appropriate declaratory relief, compensatory and punitive damages;
- B. Entering a permanent injunction enjoining individual Defendants and Defendant, City of Auburn, its agents, successors, employees, attorneys and those acting in concert therewith from continuing to violate 42 U.S.C. 2000(e); and
- C. Awarding to Plaintiff such other, further or additional relief as justice may require.

## **COUNT TWO**

### **RACE DISCRIMINATION IN PROMOTION: February 1, 2006**

36. In 1989 Defendant City of Auburn instituted and created a position called the Team Leader Position. This team leader position was designed (allegedly) to supply leaders to supervise new Firefighters drawn from the student population of Auburn University. These students were a part of the newly -- and simultaneously -- created program with the Team Leader Position, and were designated the "college student firefighting teams" or members of the Student Firefighter Program. The Team Leader position was created during the pendency of the lawsuit which resulted in the 1991 Settlement Agreement and became a part of that Settlement Agreement.

36. As previously stated, Plaintiff became proficient in the requirements for the Team Leader Position in 1994 but never received a promotion, including as part of the August 23, 2005 promotions.

37. The Team Leader position is, and has always been, a Grade 34 position, which is the same grade and pay for a Lieutenant. However, as stated in a letter to this Court from Defendant

Langley, filed January 17, 1990, a copy of which is attached hereto and made a part hereof as Exhibit "E", the Student Team Leaders have no authority or supervisory power over permanent Firefighters. These positions were allegedly created to supervise the student firefighters, provided in the 1991 Settlement Agreement. The Team Leaders did not wear Lieutenant's bars but wore a team leader badge.

38. Because of these distinctions, the Team Leader Position was not included in the Court's February 15, 1991 Order, as a position that required an outside assessment, as did the Lieutenant and Captain positions (see Order, ¶ 12). A Team Leader promotion came from within, including the promotions of August 23, 2005.

39. The Student Firefighter Program, as stated above, is composed of students from Auburn University, who attend school and work as Firefighters part-time, according to a court document filed in the Hammock case, a copy of which is attached hereto and made a part hereof as Exhibit "F". According to this document, the Team Leaders were created solely to supervise these student firefighters.

40. On February 1, 2006, thirteen Team Leaders were "re-classified" (promoted) to the Lieutenant position from "within", meaning there was no outside assessment, in violation of ¶ 12 of the 1991 Order. These re-classifications or promotions were made by Defendant Langley and the other individual defendants on the stated basis that the 1991 Settlement Agreement had expired. The 1991 Settlement Agreement has not expired. Plaintiff objected directly to Chief Langley about these promotions and he was called into the office at the public safety building and had a meeting with Defendant James, the Public Safety Director of the City; Defendant Reeves, the



Human Resource Director of the City; Defendant Langley, the Fire Chief of the City, and others. In that meeting, Plaintiff was told that the 1991 Settlement Agreement had expired and that they were going to petition the court to allow them to change all of the team leaders to lieutenants. Witnesses at this meeting included Walter Allen, Gerald Stevens and Dean Garrett, employees of the Fire Department. No petition was ever filed.

41. There is no "official" Team Leader position according to the National Fire Protection Association, a national organization for the enhancement for firefighter skills. The Team Leader position was a creation of these Defendants for the purpose of avoiding the 1991 Settlement Agreement by actually using it as a subterfuge to promote Whites to the Lieutenant grade.

42. Of the thirteen (13) Team Leaders promoted, eight came from the Student Firefighter Program and accordingly all had less seniority than plaintiff. All of the promotees from the Student Firefighter program were White. Of the thirteen (13) promotions, twelve (12) were white and one was African-American (Eddie Ogletree) and he did not come from the Student Program.

43. Of the thirteen (13) Team Leaders promoted to Lieutenant, only four had been required to take the August 23, 2005 written test. The other nine had been appointed to Team Leader pursuant to the application process described in ¶ (E) of the 1991 Settlement Agreement.

44. Pursuant to a court document filed January 17, 1990, Chief Langley has been aware since at least January 17, 1990, that the Team Leader Position was a subterfuge to promote to Lieutenants in violation of the 1991 Settlement Agreement. See Exhibit "E" hereto. According to Defendant Langley, in his letter written to Judge Varner "...I also disagree with the way team leader(s) was [sic] made lieutenant, that wasn't the understanding I had when they started the Student

Program”.

45. Plaintiff was qualified to be promoted to the position of Lieutenant. He was bypassed for the Lieutenant's position and white Firefighters were promoted to the position of Lieutenant, without the requirement of an outside assessment. Plaintiff should have been promoted to Team Leader and then upgraded as everyone else. Defendant City of Auburn's admission that outside assessment centers were not used in connection with Team Leader positions is stated in Defendant Langley's deposition taken in the Hammock Case. The pertinent excerpt of that deposition transcript is attached hereto and made a part hereof as Exhibit "F". Plaintiff alleges that the Team Leader position was created to allow Defendant City of Auburn to avoid the court-ordered outside assessment process in promotions to Lieutenant and Captain positions.

46. Until the 1991 Settlement Agreement, there were 10 - 15 Lieutenants and they were all white. Under the 1991 Settlement Agreement, the defendants were ordered to promote three African-Americans to Lieutenant. After that, no more Lieutenants were promoted. At the time of the February, 2006 promotion, as heretofore described, there remained only one Lieutenant (Gerald Stevens), as all the other lieutenants retired or quit. After February, 2006 thirteen (13) white Firefighters were appointed Lieutenant and one Black was appointed. See Memorandum titled "Title Change of Company Officer Position", dated January 28, 2006, from Defendant Langley to "All Personnel" which authorizes changing the title of Team Leader to Lieutenant, in violation of the 1991 Settlement Agreement, attached hereto and made a part hereof as Exhibit "G".

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays for the following relief:

A. Entry of an order requiring Defendants to make Plaintiff whole by granting

appropriate declaratory relief, compensatory and punitive damages;

B. Entering a permanent injunction enjoining Defendants, its agents, successors, employees, attorneys and those acting in concert therewith from continuing to violate 42 U.S.C. 2000(e);

C. Awarding to Plaintiff such other, further and additional relief as justice may require.

### COUNT THREE

#### **RACE DISCRIMINATION: BATTALION FIRE CHIEF PROMOTION: MAY, 2006**

47. In January, 2005 the City appointed four white captains to the newly created position of Battalion Fire Chief, without any outside assessment, interview or other formal process. No Blacks were promoted. There has never been a black captain or a black battalion fire chief or any black above the rank of lieutenant, manifesting a pattern and practice to avoid promoting Blacks. Furthermore, the 1991 Settlement Agreement calls for an outside assessment for the promotion to Lieutenant or Captain. The position of Battalion Fire Chief did not exist in 1991. Thus, the City of Auburn, though the battalion position is not mentioned in the 1991 Settlement Agreement, is a rank above Captain, and therefore, under the 1991 Settlement Agreement, should have been awarded by an outside assessment, which it was not.

48. When another Battalion Fire Chief job became available in May, 2006, Plaintiff applied for the position. Instead of awarding the position in the same manner as the first battalion position, Defendant City of Auburn returned to the same testing procedures used in the August 23<sup>rd</sup> promotion

and again Plaintiff failed to make the cut-off and therefore was not allowed to take the rest of the examination. Two other African-Americans also applied and they also were cut off and the three positions went to Whites.

49. Although a cut-off score was used to eliminate Plaintiff and other Blacks from the positions to which Whites were promoted, the other applicants were not required to comply with the Physical Fitness Plan, as ordered by the Court pursuant to the 1991 Settlement Agreement, which would have eliminated all of them.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays for the following relief:

A. Entry of an order requiring Defendants to make Plaintiff whole by granting appropriate declaratory relief, compensatory and punitive damages;

B. Entering a permanent injunction enjoining Defendants, its agents, successors, employees, attorneys and those acting in concert therewith from continuing to violate 42 U.S.C. 2000(e);

C. Awarding to Plaintiff such other, further and additional relief as justice may require.

#### **COUNT FOUR**

#### **RETALIATION**

50. Plaintiff reaffirms each and every allegation set forth above; the same as if stated herein.

51. Plaintiff alleges that he was a plaintiff in the Hammock Case, which incorporated the 1991 Settlement Agreement. It was through that settlement that Plaintiff was hired. Plaintiff

became a probationary Firefighter for one year. He passed his probation and became a permanent Firefighter in March of 1992. In 1994 he became eligible for promotion to Team Leader. Since that time, to the present, he has been passed over at least twenty times, as heretofore stated.

52. Plaintiff alleges that he filed an EEOC complaint alleging race discrimination in 2003 and was offered the position of Team Leader during the process of the EEOC investigation and negotiations. However, Plaintiff turned down the offer and filed an action for race discrimination, which was dismissed for reasons heretofore stated.

53. Plaintiff alleges that he has engaged in statutorily protected expression(s); he has suffered adverse employment action(s), which adverse action(s) was causally related to the protected expressions.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays for the following relief:

A. Entry of an order requiring Defendants to make Plaintiff whole by granting appropriate declaratory relief, compensatory and punitive damages;

B. Entering a permanent injunction enjoining Defendants, its agents, successors, employees, attorneys and those acting in concert therewith from continuing to violate 42 U.S.C. 2000(e);

C. Awarding to Plaintiff such other, further and additional relief as justice may require.

#### **COUNT FIVE**

#### **DISPARATE IMPACT**

54. Plaintiff reaffirms each and every allegation set forth above as if set forth herein.

55. Plaintiff alleges that the above employment practices, as administered by the defendants, have a substantial adverse impact on a protected group, namely, African-Americans.

56. Plaintiff alleges that the practices are discriminatory in operation, though the Defendants will maintain that they are fair in form. Plaintiff alleges that the employment procedure(s) and/ or testing mechanisms operate as a "built-in headwind" for minority groups and are unrelated to measuring job capability.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff requests the following relief:

A. Entering an order requiring Defendants to make Plaintiff whole by granting appropriate declaratory relief, compensatory and punitive damages; and

B. Entering a permanent injunction enjoining Defendant City of Auburn, its agents, successors, employees, attorneys and those acting in concert therewith from continuing to violate 42 U.S.C. 2000(e).

C. Awarding to Plaintiff such other, further and additional relief as justice may require.

**PLAINTIFF REQUESTS A TRIAL BY JURY**

**RESPECTFULLY SUBMITTED** on this the 23<sup>rd</sup> day of February, 2007.

**JEFFREY W. BENNITT**  
**ASB N51J (BEN 004)**

Of Counsel:

Jeff Bennitt & Associates, LLC  
P.O. Box 383063  
Birmingham, Al 35238-3063  
Suite 3A 4898 Valleydale Rd., Birmingham, Al 35242

(205) 408-7240  
fax: (205) 408-9236  
e-mail: [Bennittlaw@aol.com](mailto:Bennittlaw@aol.com)

PLAINTIFF'S ADDRESS:

c/ Jeff Bennitt & Associates

**WANDA D. DEVEREAUX**  
ASB 7244-v45w (DEV 001)

Of Counsel:

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2800 Zelda Road, Suite 200-2  
Montgomery, AL 36106  
(334) 396-5006  
fax (334) 396-3774  
e-mail: [wdd@devxllc.com](mailto:wdd@devxllc.com)

ATTORNEYS FOR PLAINTIFF

By   
\_\_\_\_\_  
WANDA D. DEVEREAUX

Defendants to be served by Process Server.

## **EXHIBIT Z**



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, and individual,	)	
GERAL STEPHENS, an individual,	)	
	)	
Plaintiffs,	)	
	)	CV: 3:07-cv-867-WKW
v.	)	
	)	
CITY OF AUBURN, et al.,	)	
	)	
Defendants.	)	
	)	
CWH RESEARCH, INC.,	)	
	)	
Third-Party Defendant	)	

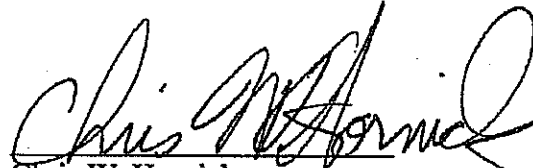
**DECLARATION OF CHRIS HORNICK**

My name is Chris Hornick, and I am President of CWH, Inc. I make this declaration based on personal knowledge.

In December of 2005, CWH entered into a Letter of Agreement with the City of Auburn, Alabama to provide certain services with regard to the City of Auburn's selection of Fire Battalion Chiefs. Attached hereto as Exhibit 1 is a copy of that Letter of Agreement. Pursuant to that Letter of Agreement, CWH agreed to provide, among other services, written test services and services related to a separate assessment center designed to measure a candidate's knowledge, skills, and abilities. The City of Auburn elected against CWH's advice to impose a test score cutoff of 70 as a pre-condition to advancing to the assessment center. CWH recommended that

the City allow all applicants to proceed to the assessment center regardless of test score. CWH had no authority to impose a cutoff or to make any decision relating to the City of Auburn's selection of Fire Battalion Chiefs.

I make this declaration under penalty of perjury this 2<sup>nd</sup> day of September, 2008.

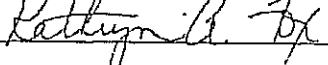
  
Chris W. Hornick

**CWH Research, Inc.**9085 E. Mineral Circle, Suite 350, Englewood, CO 80112  
303-617-3433

this agreement and which are due to that party's own negligence, carelessness, unskillfulness, and other unlawful conduct and/or the negligence, carelessness or unskillfulness or other unlawful conduct of its respective officers, agents and/or employees acting in their official capacities. Provided; however, Client shall defend, indemnify and hold CWH, its officers, agents and employees free and harmless from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with the negligence, tortious acts or other unlawful conduct of Client or its respective agents, officers and employees in the performance of this agreement. Provided however, that Client does not waive its defense of sovereign immunity or any other immunity or privilege afforded by law; nor does client waive official immunity available to any officer, employee, or agent acting by or on behalf of Client. In addition, CWH shall defend, indemnify, and hold Client, its officials, representatives, agents, servants and employees free and harmless from and against any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or other unlawful conduct of CWH or its respective agents, officers and employees in the performance of this agreement.

**AUTHORIZED REPRESENTATIVE**

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this contract and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

**(i) CLIENT:**Steven A. ReevesHuman Resources Director130 Tichenor AvenueAuburn, AL 36830By: Name: David F. WatkinsTitle: City Manager**(ii) CWH Research, Inc.**  
Kathryn A. Fox, M.A.  
9085 E. Mineral Circle  
Suite 350  
Englewood, Colorado 80112

Kathryn A. Fox, Vice-President

EXECUTED this 21st day of December, 2005.

12/21/2005

Page 6 of 7

**CWH Research, Inc.**

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303-617-3433

- c) Interest of the Client. No elected official or any officer or employee of the Client shall have a financial interest, direct or indirect, in this contract.
- d) Interest of CWH. CWH covenants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict with the performance of services required to be performed under this contract; they further covenant that in the performance of this contract, no person having any such conflict of interest shall be employed.
- e) Maintenance of Records. All appropriate records related to the aforementioned projects will be maintained by CWH for the required statute of limitations.
- f) Modification. This contract contains the entire Agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless mutually consented to in writing and signed by an authorized officer of the respective parties.
- g) Assignment. CWH may not assign its rights under this Agreement without the express prior written consent of the Client, and such successor in interest may not assign its rights under this Agreement without the express prior written consent of the Client. The Client has the right to continue with the assignee or cancel the Agreement with a pro-rata refund.
- h) Termination. The Client may terminate this Agreement upon 30 days written notice without cause. Upon delivery of said notice to CWH, CWH shall cease performing any work pursuant to this agreement and shall be entitled to retain that portion of the fee for services performed through and including the 30 days notice period prior to termination.
- i) Insurance. CWH will be required to provide certificates of insurance showing that it carries, or has in force, automobile liability insurance, general liability insurance, professional liability insurance and workers' compensation insurance. Limits of liability for automobile liability insurance shall be, at a minimum, \$1,000,000.00 combined single limit. Limits of liability for general liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence, \$1,000,000.00 personal and advertising injury, \$1,000,000.00 general aggregate and \$1,000,000.00 products/completed operations aggregate. General liability insurance will include coverage for contractually assumed liability. Limits of liability for professional liability shall be, at a minimum, \$1,000,000.00 per occurrence or claim and \$3,000,000.00 aggregate. If professional liability coverage is on a claims-made basis, CWH will maintain coverage in force for a period of two (2) years following completion of the work specified in the agreement. Workers' compensation insurance shall provide statutory workers' compensation coverage and employers' liability coverage with limits of, at a minimum, \$500,000.00 each accident, \$500,000.00 disease - each employee and \$500,000.00 accident, \$500,000.00 disease - policy limit.
- The certificate of insurance shall provide the Client with thirty (30) days written notice of cancellation of any of the coverages named in said certificate.
- The Client will be named as additional insured under the CWH's general liability insurance and automobile insurance policies.
- CWH shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by the CWH. These certificates shall evidence waivers of subrogation in favor of CWH and the Client and shall be made available to the Client upon request.
- j) Indemnification. Each party shall generally be responsible for its own acts and will be responsible for all damages, costs, fees, and expenses, including attorney's fees and costs, which arise out of the performance of

12/21/2005

**CWH Research, Inc.**

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303-617-3433

This price includes the complete and satisfactory performance of the Services specified in this Agreement. Optional components may be selected by client for additional charges noted.

If any additional work is required beyond what this contract states, Dr. Hornick will provide his assistance at the rate of \$250 per hour. Any additional work provided by other personnel in CWH will be charged at the rate of \$175 per hour for Managing Consultants, \$125 per hour for Consultants, and \$50 per hour for clerical.

Expert Testimony. CWH shall provide expert testimony concerning any aspect of its work related to this contract and/or the resultant defense of all related products. This testimony and any necessary preparation will be performed at the hourly rate mentioned above, plus any travel or other related expenses which are incurred.

5) Client Responsibilities. In addition to paying CWH for services according to the preceding paragraph, the Client shall have the following responsibilities:

- a) The Client shall provide for the written test and assessment center appropriate testing site(s) and materials, including rooms and furniture conducive to the taking of tests. In addition, all necessary supplies needed by candidates, assessors, and proctors during the written test and assessment center shall also be provided by Client.
- b) The Client shall make arrangements for qualified written test and assessment center administrators and proctors. The qualified administrators must be approved by CWH.
- c) The Client shall make all notifications to those people who are eligible to take the test. These notifications include, by way of explanation, but not by way of limitation: testing dates, testing times, and testing places. Further, Client shall make all reasonable attempts to provide for notifications, testing opportunities, and similar concerns to all candidates in a fair and impartial manner.
- d) The Client shall supply sufficient numbers of assessors and role players to conduct the assessment centers, based on criteria established by CWH. Should these assessors or role players require payment for their time or expenses, the Client agrees to assume full responsibility for these costs.
- e) CWH will retain the copyrights to all materials developed in the performance of this contract. CWH will, however, grant the Client a non-exclusive, royalty free license to use the selection procedures that will be developed for the duration of this contract. Client shall not reveal the contents of the tests to anyone without the written consent of CWH. The Client assumes full responsibility and liability for any violation of this provision by its employees and/or agents to the extent such employees and/or agents were acting within the scope of their employment and or agency.
- f) Client shall return all testing materials provided by CWH, to CWH.

6) Provisions of the Contract. The following provisions are made a part of this contract:

- a) Non-Discrimination. CWH certifies and represents that, during the performance of this Contract, Contractor and any other parties with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex or age. Contractor further certifies that it will not maintain any segregated facilities.
- b) Applicable Law. Parties to this contract shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. This contract should be construed in accordance with the laws of the State of Alabama. If a dispute arises involving this agreement, and the parties are not able to amicably resolve such dispute, then the parties agree that all claims shall be brought in a Court of Competent jurisdiction located in Alabama.

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- 4) Payment for Services. In consideration of the Services of CWH, the Client shall pay CWH the total sum shown below for services. Travel expenses will be billed at additional cost.

Breakdown for services is as follows:

Service	Cost
Job Analysis Review	Included
Semi-Customized Written Test	
Technical Job Knowledge Component	\$2,500.00
Situational Judgment Component	\$4,500.00
Assessment Center	\$10,000.00
<b>TOTAL (excluding options and expenses)</b>	<b>\$17,000.00</b>
<b>OPTIONS:</b>	
Written Feedback Letters (\$125 per candidate -- assumes 10 candidates)	\$1,250.00
Additional days of assessment center administration	\$800 per day
"Hot Seat" exercise	Not included
CWH obtaining assessors	Not included

Payment to be made as follows (excludes options and expenses):

25% upon initiation of contract	\$4,250.00
25% upon completion of SMF test development meeting	\$4,250.00
25% upon completion of written test	\$4,250.00
25% upon completion of assessment center	\$4,250.00

Options will be billed with the final invoice following completion of the assessment center.

All travel and additional expenses will be billed at cost as incurred or at the below standard rates. These expenses will include the following categories and rates:

Airfare	Economy class, with first class upgrades paid for by CWH mileage points. Cost varies by area -- every attempt will be made to minimize cost. Billed at cost.
Hotel charges	Mid priced hotel, such as Marriot, Hilton, etc. We use government rates and discounts when possible. Cost varies by area -- every attempt will be made to minimize cost. Billed at cost.
Per Diem	\$45 per day, or \$15 per meal.
Mileage to/from airport and to/from client site	\$0.42 cents per mile, plus applicable tolls.
Rental car	Mid size car. Varies by area -- every attempt will be made to minimize cost. Billed at cost.
Shipping	US Postal service or FED EX is generally used, depending upon requirements. 2 day shipping is generally used, unless overnight is required.

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- b) Written Test Development
  - (1) Developing and validating a semi-customized written exam composed of 70 to 80 traditional job knowledge written items and 20 to 30 situational judgment items. Includes recommendations as to the format of the questions and answers, the number of questions to be included and the study sources. Includes up to 30 custom test items designed specifically for the client.
  - (2) Provide master copy of the exam, the delivery of the exam and answer sheets, scoring of the exam, and handling appeals.
- c) Test Scoring
  - (1) Score tests.
  - (2) Conduct relevant statistical analysis.
  - (3) Consult with the Client regarding the format and structure of the final eligibility lists.
  - (4) Provide results in written format within two weeks after completion of the exams.
  - (5) Handle test challenges or concerns.
- d) Assessment Center
  - (1) Develop one set of exercises for each position, selecting three of the following for each position: In-basket, Oral Resume, Oral Presentation, Written Exercise, Role-Play or Emergency / Tactical Scenario.
  - (2) Provide candidate orientations, conduct rater training, conduct training for Client staff as required or needed.
  - (3) Provide assessor training.
  - (4) Administer process to up to 12 candidates (one day of testing).
  - (5) Score.
- e) Feedback
  - (1) Provide written feedback letters to candidates.
  - (2) Provide process summary to Client.
- f) Validity. CWH shall conduct a content validation process for the test(s). This validation will meet and adhere to the following standards and guidelines:
  - (1) Federal EEOC Uniform Guidelines on Employment Selection Procedures.
  - (2) Principles for the Validation and use of Personnel Selection Procedures.
  - (3) Standards and Ethical Considerations for Assessment Center Operations.
  - (4) Standards for Education and Psychological Tests.



#### LETTER OF AGREEMENT

THIS AGREEMENT is made this 21st day of December, 2005 between the City of Auburn, Alabama (hereinafter called "the Client") and CWH Research, Inc., (hereinafter called "CWH") a Colorado Corporation, whose business address is 9085 E. Mineral Circle, Suite 350, Englewood, CO 80112.

- 1) The Contract. This document is a complete agreement.
- 2) Definitions. When used in this Agreement, the following words and phrases shall have the indicated meanings:
  - a) candidate - an individual who appears at the testing site and begins the written test.
  - b) written test - a written measuring instrument and accompanying answer sheets, which may or may not be combined with other instruments into a single battery.
  - c) qualified administrator - an individual who has had previous experience in written test administration, has been apprised of the confidential nature of the tests, the importance of fair and impartial testing, and the importance of maintaining strict test security. Further, this individual shall have read the CWH general instructions for written test administrations, and shall have been approved by CWH.
  - d) written test session - the period from commencement of the first test in a CWH promotional test battery to the last test in that battery, occurring on the testing date (s) agreed upon by CWH and client.
  - e) assessment center - exercises or simulations designed to measure candidates' knowledge, skills, and abilities, as well as the scoring of those candidates' performance on each of the exercises and simulations.
  - f) assessor - an individual who has been trained in the use of assessment centers and the evaluation of candidates' performances in assessment centers. Further, the assessor or assessors shall have been apprised of the confidential nature of the assessment center exercises, the importance of fair and impartial evaluations, and the importance of maintaining strict security over all elements of the assessment center.
  - g) assessment center test session - the period from commencement of the first set of assessment center exercises to the last exercise and final evaluation of candidates, occurring on the testing date (s) agreed upon by CWH and the Client.
  - h) oral board - series of structured interview questions designed to measure candidates' knowledge, skills, and abilities, as well as the scoring of those candidates' performance on each of the questions.
  - i) oral board test session - the period from commencement of the first oral board question to the last question and final evaluation of candidates, occurring on the testing date (s) agreed upon by CWH and the Client.
- 3) Services to be Performed by CWH. CWH is an independent contractor and is not an agent, servant, employee or partner of the Client, and nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating a relationship of principal and agent or partnership or joint venture between the parties. CWH shall perform services for the Client in the categories listed below (collectively, the "Services"). These categories, and some, but not necessarily all, of the major services to be performed for the Fire Battalion Chief position as follows:
  - a) Job Analysis Review
    - (1) Job analysis review includes conducting interviews to develop test instruments and to provide a content valid process.




RESOLUTION NO. 05-288

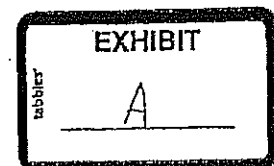
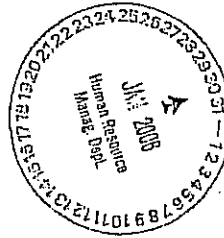
BE IT RESOLVED by the City Council of the City of Auburn, Alabama, that the City Manager is authorized to execute the attached contract with CWH Research, Inc. for the development and administration of a promotion selection process for the position of Fire Battalion Chief.

ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this 20th day of December, 2005.

  
Mayor

ATTEST:

  
City Manager



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**EDDIE OGLETREE, an individual;** )

**GERALD STEPHENS, an individual** )

**Plaintiff,** )

**vs.** )

**CITY OF AUBURN, a municipality in The** )

State of Alabama; **LARRY LANGLEY, an** )

individual; **LEE LAMAR, an individual;** )

**BILL HAM, Jr., an individual; STEVEN** )

**A.REEVES, an individual; BILL JAMES,** )

an individual; **CHARLES M. DUGGAN,** )

an individual; and **CORTEZ LAWRENCE,**)

an individual; )

**Defendants,** )

**CIVIL ACTION NO:**

**3:07-cv-867-WKW**

**JURY TRIAL DEMANDED**

**PLAINTIFFS' RESPONSE TO THE DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

**COME NOW** the Plaintiffs, through counsel, and respond to the Defendants' Motion for Summary Judgment and state that, pursuant to FRCP 56, there are genuine issues of material fact for submission to a jury, and judgment as a matter of law is improper. In support of this response, the Plaintiffs submit their response Brief contemporaneously with the following submissions of evidence:

1. All Pleadings to date;
2. Ex A-1991 Hammock Order;
3. Ex B-CWH Research Inc. Letter of Agreement;
4. Ex C-CWH Research Inc. Auburn Fire Division Orientation Manual;
5. Ex D-Battalion Chief Memo dated February 17, 2006;

6. Ex E- Battalion Chief Memo dated February 23, 2006;
7. Ex F- Gerald Stephens Lieutenant Promotion Letter;
8. Ex G- CWH Research Inc./City of Auburn E-mails;
9. Ex H-Modification of Lieutenant Promotional Process signed by Gerald Stephens;
10. Ex I-Modification of Lieutenant Promotional Process signed by Chris Turner;
11. Ex J-City of Auburn Personnel Policies § 2.07 and § 2.09;
12. Ex K-Eddie Ogletree EEOC Charge of Discrimination;
13. Ex L-Gerald Stephens EEOC Charge of Discrimination;
14. Ex M- EEOC Determination regarding Eddie Ogletree;
15. Ex N-EEOC Determination regarding Gerald Stephens;
16. Ex O-City of Auburn Interrogatory responses;
17. Ex P-Grievance Letter dated May 12, 2006;
18. Ex Q-Lee Lamar Letter dated April 28, 2006;
19. Ex R-April 14, 2006 Letters to Ogletree and Stephens regarding the denial of the Battalion Chief Promotion;
20. Ex S-Affidavit of Gerald Stephens with attachments;
21. Ex T-Affidavit of Eddie Ogletree with attachments;
22. Ex U-Affidavit of Christopher Turner;
23. Ex V-Affidavit of Horace Clanton;
24. Ex W-Affidavit of William Felton;
25. Ex X-Grievance Letter dated May 24, 2006;
26. Ex Y-Christopher Turner lawsuit;
27. Ex Z-Affidavit of CWH Research Inc.;

28. Ex AA-Larry Langley Letter;
29. Deposition Testimony of Eddie Ogletree;
30. Deposition Testimony of Gerald Stephens;
31. Deposition Testimony of Stephen Reeves;
32. Deposition Testimony of Lee Lamar;
33. Deposition Testimony of Larry Langley;
34. Deposition Testimony of William James;

**WHEREFORE**, Plaintiffs respectfully request the denial of the Defendants Motion for Summary Judgment.

/s/ Richard F. Horsley  
**Richard F. Horsley (HOR023)**  
**Attorney for Plaintiffs:**  
**Gerald Stephens & Eddie Ogletree**

**OF COUNSEL:**  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using electronic filing which will send notification of such filing on this the 2nd day of September, 2008.

**/s/ Richard F. Horsley**

**Richard F. Horsley**

**Randall Morgan, Esquire  
Hill, Hill, Carter, Franco, Cole & Black PC  
425 South Perry Street  
Montgomery, Alabama 36104  
Telephone: (334) 834-7600  
Facsimile: (334) 262-4389  
E-mail: [morgan@hillhillcarter.com](mailto:morgan@hillhillcarter.com)**

## **EXHIBIT AA**

To Judge Robert Vanner

I object to the Settlement Dudley Perry had  
 agree to. **RECEIVED** **FILED**  
 Dudley Perry Action at the meeting **JAN 17 1990**  
 was uncall for. Mr. Perry said he was going to settle this case himself & we had no say in the matter. Mr. Perry had told us we would be Grandfather concerning schooling & physical fitness, but the agreement he had was not like that. Mr. Perry has done nothing to stop the harassment from City officials. We were not allow to sit in on ~~the~~ negotiations, but Alan Ledbetter was allow to sit in on his. I disagree with the promotion of Jessie Strickland & Bill Felton to Lieutenant. I also disagree with the way Team leader was made Lieutenant, that was not the understanding I had when they started the Student Program. I have had no say in the concerning this Proposal & therefore I must object to the Proposal.

your Respectfully  
 Larry Langley

**DEPOSITION TESTIMONY OF  
EDDIE OGLETREE**



**DEPOSITION OF EDDIE OGLETREE**

**June 6, 2008**

**Pages 1 through 192**

**PREPARED BY:**

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Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE MIDDLE DISTRICT OF ALABAMA 3 EASTERN DIVISION 4 5 EDDIE OGLETREE, an individual, 6 GERALD STEPHENS, an 7 individual, 8 Plaintiffs, 9 Vs. CIVIL ACTION NO. 10 3:07-CV-867-WKW 11 12 CITY OF AUBURN, a municipality 13 in the State of Alabama, LARRY 14 LANGLEY, and individual, LEE LAMAR, 15 an individual, BILL HAM, JR., an 16 individual, STEVEN A. REEVES, an 17 individual, BILL JAMES, an 18 individual, CHARLES M. DUGGAN, an 19 individual, and CORTEZ LAWRENCE, 20 an individual. 21 Defendants. 22 ***** 23 DEPOSITION OF EDDIE OGLETREE, taken pursuant to stipulation and agreement before Pamela A. Wilbanks, Certified Court Reporter, ACCR# 391, Registered Professional Reporter and Commissioner for the State of Alabama at Large, in the Law Offices of Hill, Hill, Carter, Franco, Cole &amp; Black, 425 South Perry Street, Montgomery, Alabama, on Friday, June 6, 2008, commencing</p>	<p>1 EXAMINATION INDEX OF MR. STEPHENS 2 BY MR. HANCOCK ..... 188 3 BY MR. MORGAN ..... 189 4 5 DEFENDANT'S EXHIBIT INDEX 6 14 City of Auburn Employment Application 78 7 15 4/4/05 letter to Mr. Ogletree from Steve 103 8 Reeves concerning the Candidate Feedback 9 Report 10 16 4/14/06 letter to Mr. Ogletree from 103 11 Stephanie King 12 13 17 4/21/06 letter to Chief Lamar from Clanton, 108 14 Hodge, Ogletree and Stephens 15 16 STIPULATION 17 18 It is hereby stipulated and agreed by and 19 between counsel representing the parties that the 20 deposition of EDDIE OGLETREE is taken pursuant to the 21 Federal Rules of Civil Procedure and that said 22 deposition may be taken before Pamela A. Wilbanks, 23 Registered Professional Reporter and Commissioner for the State of Alabama at Large, without the formality of a commission, that objections to questions other than objections as to the form of the question need not be</p>
Page 2	Page 4
<p>1 APPEARANCES 2 FOR THE PLAINTIFFS: 3 Mr. Richard F. Horsley 4 KING, HORSLEY &amp; LYONS 5 Attorneys at Law 6 1 Metroplex Drive 7 Suite 280 8 Birmingham, AL 35209 9 10 FOR THE DEFENDANTS: 11 Mr. Randall Morgan 12 HILL, HILL, CARTER, FRANCO, COLE &amp; BLACK 13 Attorneys at Law 14 425 South Perry Street 15 Montgomery, Alabama 16 17 FOR CWH: 18 Mr. William K. Hancock 19 ADAMS &amp; REESE 20 Attorneys at Law 21 Suite 1100 22 2100 Third Avenue North 23 Birmingham, AL 35203 ALSO PRESENT: Mr. Steven Reeves Mr. Lee Lamar Mr. Gerald Stephens ***** EXAMINATION INDEX BY MR. MORGAN ..... 4 BY MR. HANCOCK ..... 185 BY MR. MORGAN ..... 186 BY MR. HANCOCK ..... 187 BY MR. MORGAN ..... 188</p>	<p>1 such time as the said deposition may be offered in 2 evidence or used for any other purpose by either party 3 provided for by the Statute. 4 It is further stipulated and agreed by and 5 between counsel representing the parties in this case 6 that the filing of said deposition is hereby waived and 7 may be introduced at the trial of this case or used in 8 any other manner by either party hereto provided for by 9 the Statute regardless of the waiving of the filing of 10 the same. 11 It is further stipulated and agreed by and 12 between the parties hereto and the witness that the 13 signature of the witness to this deposition is hereby 14 waived. 15 16 ***** 17 EDDIE OGLETREE 18 The witness, after having first been duly sworn 19 to speak the truth, the whole truth and nothing but the 20 truth testified as follows: 21 EXAMINATION 22 BY MR. MORGAN: 23 Q. State your name, please.</p>

Page 5	Page 7
<p>1 A. Eddie Ogletree.</p> <p>2 MR. HANCOCK: Before we get started, I</p> <p>3 think we've got a stipulation from</p> <p>4 the plaintiffs that I'd like to</p> <p>5 put on the record.</p> <p>6 MR. HORSLEY: The plaintiffs in this</p> <p>7 case will stipulate that at this</p> <p>8 point in the litigation, we do not</p> <p>9 have a claim and are not claiming</p> <p>10 that the test in and of itself at</p> <p>11 issue is a discriminatory test.</p> <p>12 We are not waiving the right to</p> <p>13 claim that in the future, but at</p> <p>14 this point in the litigation we</p> <p>15 have not even seen the test so I</p> <p>16 don't think that we can claim that</p> <p>17 statistically the test is a</p> <p>18 discriminatory test at this point</p> <p>19 since we have not even seen it.</p> <p>20 But we are not waiving the right</p> <p>21 to claim that in the future of</p> <p>22 this litigation.</p> <p>23 MR. HANCOCK: As I understand it, the</p>	<p>1 Absolutely not.</p> <p>2 MR. MORGAN: What is the disparate</p> <p>3 impact claim if you're not</p> <p>4 claiming it's the results from the</p> <p>5 test?</p> <p>6 MR. HORSLEY: It is the results of the</p> <p>7 test.</p> <p>8 MR. MORGAN: You're claiming --</p> <p>9 MR. HORSLEY: I'm not dropping any</p> <p>10 claim. We never made a claim in</p> <p>11 this lawsuit against this company;</p> <p>12 y'all did.</p> <p>13 MR. MORGAN: Well, I know that. But</p> <p>14 you claim that the written test --</p> <p>15 and if I'm wrong, correct me --</p> <p>16 that the written test, that the</p> <p>17 procedure had a disparate impact</p> <p>18 on blacks.</p> <p>19 MR. HORSLEY: Yes, we're claiming</p> <p>20 that.</p> <p>21 MR. HANCOCK: As I read the complaint,</p> <p>22 it's not the test. It's the</p> <p>23 procedure of who takes the test.</p>
Page 6	Page 8
<p>1 disparate impact claim that you're</p> <p>2 bringing in the City's --</p> <p>3 MR. HORSLEY: The disparate impact</p> <p>4 claim that we have made in the</p> <p>5 case and that we made from the</p> <p>6 outset is that the City's</p> <p>7 implementation of a test has a</p> <p>8 disparate impact on the</p> <p>9 plaintiffs, not that the test in</p> <p>10 and of itself is a discriminatory</p> <p>11 test and causes -- or that the</p> <p>12 test in and of itself is a</p> <p>13 disparate impact test.</p> <p>14 MR. HANCOCK: And the policy -- the</p> <p>15 City's policy with regard to who</p> <p>16 is allowed to take the test; is</p> <p>17 that correct?</p> <p>18 MR. HORSLEY: Correct.</p> <p>19 MR. MORGAN: Wait a minute. Both of</p> <p>20 y'all are stipulating to a lot.</p> <p>21 Are you dropping your</p> <p>22 disparate impact claim?</p> <p>23 MR. HORSLEY: No, we are not.</p>	<p>1 It's the policy of utilizing a</p> <p>2 test.</p> <p>3 MR. HORSLEY: It's the policy of</p> <p>4 implementing the test in order to</p> <p>5 give people this promotion.</p> <p>6 That's what we've been claiming</p> <p>7 all long.</p> <p>8 MR. HANCOCK: But not the test</p> <p>9 itself?</p> <p>10 MR. HORSLEY: We don't have any</p> <p>11 evidence at this point in the</p> <p>12 litigation --</p> <p>13 MR. MORGAN: Wait a minute. Are you</p> <p>14 saying the test does not have a</p> <p>15 disparate impact?</p> <p>16 MR. HORSLEY: No, I'm not saying</p> <p>17 that.</p> <p>18 MR. HANCOCK: He's saying he doesn't</p> <p>19 know.</p> <p>20 MR. MORGAN: Huh?</p> <p>21 MR. HORSLEY: No. We're saying it</p> <p>22 does have a disparate impact.</p> <p>23 MR. MORGAN: The written test?</p>

Page 9	Page 11
<p>1 MR. HORSLEY: The fact that the City 2 made these people take the test. 3 MR. MORGAN: I can see the claim where 4 you say the written test shouldn't 5 have been required. I don't have 6 any problem with that. 7 MR. HORSLEY: Right. 8 MR. MORGAN: I understand that. But 9 then you have a disparate impact 10 claim. Are you -- 11 MR. HORSLEY: Let's go off the record. 12 (Brief off-the-record discussion.) 13 MR. HORSLEY: After a meeting with 14 Randall and Will about the 15 previous stipulation for today's 16 deposition, we are not going to 17 stipulate to anything on the 18 record pursuant to the disparate 19 impact claim which we stated 20 earlier. So for today there's no 21 stipulation on the record about 22 the disparate impact claim or the 23 test.</p>	<p>1 A. Yes. 2 Q. And that was also cancelled? 3 A. Uh-huh (positive response). 4 Q. So you never went through -- 5 A. Never went through any process. 6 Q. Do you remember what the process would have been 7 for lieutenant in '94? 8 A. It would have been -- More or less it would have 9 been a structured interview type of thing. 10 Q. Did you sit on any of the structured interviews 11 or assessment -- 12 A. I did. 13 Q. Which ones did you sit on? 14 A. I probably have sat on about four to five from a 15 period of, like, the year of '97 or '98 till 16 about maybe 2001, somewhere along in there. 17 Q. Would that have been for team leader? 18 A. That would have been for team leader. 19 Q. And did Chris Turner apply for team leader 20 during those -- 21 A. I believe he did one time. 22 Q. Do you remember how you graded him? 23 A. He was above average. I graded him above</p>
Page 10	Page 12
<p>1 Q. State your name, please. 2 A. Eddie Ogletree. 3 Q. And, Mr. Ogletree, you're employed as a 4 lieutenant with the City of Auburn Fire 5 Department? 6 A. Yes. As of February 1st, 2006 when they changed 7 the title from team leader. 8 Q. And before that you were a team leader? 9 A. Yes. 10 Q. And when did you become a team leader? 11 A. June 1st of 1996, I believe, somewhere around 12 there. 13 Q. And what procedure did you go through to be 14 eligible to be a team leader in 1996? 15 A. They called it -- I guess it was like a 16 structured interview. 17 Q. Is that the first time that you had applied for 18 team leader in '96? 19 A. I had applied one time before, but they took the 20 job off the board. And I had applied for a 21 lieutenant's position about a year or two before 22 that, and they cancelled the job. 23 Q. You applied for lieutenant before '96?</p>	<p>1 average. 2 Q. Do you remember who got promoted that time? 3 A. I couldn't recall. I couldn't recall. It's 4 been several guys. I do know that one of them 5 might have been Hartsfield, which is a battalion 6 chief now. I believe he might have been one of 7 them that got promoted. I think it might have 8 been him. 9 Q. Rodney Hartsfield? 10 A. Yes. 11 Q. Is he a good officer? 12 A. Rodney? 13 Q. Yeah. 14 A. He's no better than I would be or -- He's a good 15 officer, but all officers there are pretty good. 16 Q. Did you participate in petitioning the City to 17 change the rank from team leader to lieutenant? 18 A. Yes. 19 Can I elaborate? 20 Q. Yeah. 21 A. When they came around to me -- 22 Q. Now, who is "they"? 23 A. Joey Darby. I was approached by Joey Darby</p>

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1 first about it before I seen any paperwork. And  
 2 he had said that they was going -- they was  
 3 thinking about petitioning to change the team  
 4 leader title to lieutenant and say he had  
 5 chalked to chief about it, which would have been  
 6 Chief Langley at the time. And he approached me  
 7 again, and he showed me the paperwork. And when  
 8 I read through the paperwork, it was my  
 9 understanding that they was going to petition  
 10 the court, and that's the only reason I signed,  
 11 because I figured if they go back through the  
 12 court system, then everything would be legal and  
 13 it would take enough time where everybody would  
 14 be satisfied, because I was approached by then  
 15 by Chief Garrett, and he had already said that  
 16 they know that certain people were going to  
 17 complain about it. Just because -- I signed  
 18 that paper, but I didn't think -- I thought it  
 19 was going to court.

20 Q. Well, what about Chief Garrett knew that certain  
 21 people were going to complain? Who --

22 A. Chief Garrett had stated that Chris Turner and  
 23 Lieutenant Stephens and Walter Allen -- the

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1 chief already knew they weren't going to agree  
 2 with it.  
 3 Q. Well, did that influence your decision to sign  
 4 it, the fact that they weren't going to agree  
 5 with it?  
 6 A. The one thing on there that I signed for was to  
 7 court. They stated they were going to petition  
 8 the court, because, you know -- Another thing  
 9 about that: Those guys that were pushing that  
 10 petition, they had a real problem with answering  
 11 to Lieutenant Stephens over there. And my only  
 12 conclusions with that was because Lieutenant  
 13 Stephens was black, and he was the highest  
 14 ranking officer in the fire department at that  
 15 time. And they had a real problem when he was  
 16 giving them orders. I have heard them complain,  
 17 go over his head, say they think they was equal  
 18 rank to him. And the policy plainly states that  
 19 team leaders had no say-so over regular  
 20 firefighters or officers.

21 Q. Who are the officers that complained about  
 22 Lieutenant Stephens -- taking orders from  
 23 Lieutenant Stephens?

Page 15

1 A. Joey Darby.

2 Q. Okay.

3 A. Matt Joy.

4 Q. Matt who?

5 A. Matt Joy.

6 Q. J-O-Y?

7 A. J-O-R-D-A-N.

8 Q. Jordan. Okay.

9 A. I know they complained directly.

10 Q. Complained directly to who?

11 A. Chief Garrett.

12 Q. What other team leaders did you hear complain  
 13 about taking orders from Lieutenant Stephens?

14 A. I just -- I knew it was a problem. Most all --  
 15 It's probably about eight to nine of them.

16 Q. Give me their names.

17 A. Jason Brown. Let's see who else it would be.  
 18 Clay Carson, John Benefield, Joe Lovvorn, I  
 19 remember those guys directly.

20 Q. Who did they complain to about --

21 A. Their immediate supervisor, because at the time  
 22 they were giving Lieutenant Stephens a hard  
 23 time.

Page 16

1 Q. These six people were giving Lieutenant Stephens  
 2 a hard time?

3 A. They just didn't think that their rank and his  
 4 rank -- They thought their rank and his rank was  
 5 the same.

6 Q. I want to be clear on what their complaint was.  
 7 If they thought the rank was the same, that's  
 8 one thing. But what you said was that they were  
 9 complaining because Lieutenant Stephens was  
 10 black. Now, did you hear any of these people  
 11 say, I don't want to take orders from Lieutenant  
 12 Stephens because he's black?

13 A. No, I didn't hear them say it.

14 Q. Did you hear anybody say --

15 A. But --

16 Q. -- anything like that?

17 MR. HORSLEY: Just answer his  
 18 question.

19 Q. Wait a minute.

20 Did you hear anybody say anything like that,  
 21 that I don't want to take orders from Lieutenant  
 22 Stephens because he's black? Who do you accuse  
 23 of those people that you named of complaining

Page 17	Page 19
<p>1 about taking orders from Lieutenant Stephens</p> <p>2 because he's black?</p> <p>3 A. No one.</p> <p>4 Q. Their complaint was they thought their rank as a</p> <p>5 team leader was equal to his rank as a</p> <p>6 lieutenant, true?</p> <p>7 A. Yes, that's true.</p> <p>8 Q. Did you feel like your rank as a team leader was</p> <p>9 equal to the lieutenant rank?</p> <p>10 A. No.</p> <p>11 Q. Well, since the promotion or the change from</p> <p>12 team leader to lieutenant did not go through the</p> <p>13 court --</p> <p>14 You know that, don't you?</p> <p>15 A. Yes. I know it because it come back too quick.</p> <p>16 Q. Did you refuse to accept that rank change since</p> <p>17 it didn't go through the court?</p> <p>18 A. I didn't refuse. I just took -- They gave me</p> <p>19 the bars, and I just put them on and kept doing</p> <p>20 the same thing I've been doing.</p> <p>21 Q. Did you complain to anybody or make any comment</p> <p>22 to anybody when you became a lieutenant that you</p> <p>23 thought it needed to go through the court?</p>	<p>1 Q. And did you tell Mr. Darby that you were only</p> <p>2 signing it because it was going through the</p> <p>3 court?</p> <p>4 A. Yes. They say they was going to petition the</p> <p>5 court, and I say I'll sign it.</p> <p>6 Q. Did you tell them you wouldn't sign it if they</p> <p>7 weren't going to petition the court?</p> <p>8 A. No. That was my understanding when it came to</p> <p>9 me, that it was going to the court system.</p> <p>10 Q. Is it your position in this lawsuit that you</p> <p>11 should not be a lieutenant?</p> <p>12 MR. HORSLEY: Object to the form.</p> <p>13 A. No. Because other people that got promoted over</p> <p>14 the years were doing less.</p> <p>15 Q. I'm not asking about other people. I'm asking</p> <p>16 about Eddie Ogletree.</p> <p>17 A. No.</p> <p>18 Q. Is it your position because they didn't petition</p> <p>19 the court that you should not be a lieutenant?</p> <p>20 A. No.</p> <p>21 Q. Your position is you should be a lieutenant?</p> <p>22 A. Yes.</p> <p>23 Q. Is it your position that because you were a team</p>
Page 18	Page 20
<p>1 A. I talked to Lieutenant Stephens.</p> <p>2 Q. Anybody else?</p> <p>3 A. No.</p> <p>4 Q. Steve Reeves or any of these people that you've</p> <p>5 sued?</p> <p>6 A. No.</p> <p>7 Q. Did you say anything to them about -- complain</p> <p>8 about being changed from a team leader to a</p> <p>9 lieutenant?</p> <p>10 A. No.</p> <p>11 Can I say something else on that?</p> <p>12 Q. Say whatever you want.</p> <p>13 A. I been there long enough to know that</p> <p>14 complaining don't do no good. When somebody</p> <p>15 make a decision, you know -- If I'm going to do</p> <p>16 something, I'm going to do it formally. That's</p> <p>17 why we're here now. But complaining, you just</p> <p>18 make your day bad.</p> <p>19 MR. MORGAN: Well, I'm going to move</p> <p>20 to exclude that.</p> <p>21 Q. Well, who brought you the petition that you</p> <p>22 signed, Joey Darby?</p> <p>23 A. Joey Darby.</p>	<p>1 leader and the change to lieutenant did not go</p> <p>2 to the court that you should not be eligible for</p> <p>3 promotion to battalion chief?</p> <p>4 A. No. Because team leaders were eligible for</p> <p>5 promotion.</p> <p>6 Q. Well, do you have any problem with team leaders</p> <p>7 being eligible for promotion to battalion chief?</p> <p>8 A. No.</p> <p>9 Q. You don't have any complaint about that, do you?</p> <p>10 A. No, I didn't have a complaint about that.</p> <p>11 Q. Do you have a complaint about people who had not</p> <p>12 yet achieved the rank of team leader being</p> <p>13 eligible to apply for the battalion chief</p> <p>14 promotion?</p> <p>15 A. Yes, I do.</p> <p>16 Q. What's your problem with that?</p> <p>17 A. When I came there, it was five years before you</p> <p>18 could even put in for anything above -- You</p> <p>19 could be a firefighter from your first five</p> <p>20 years.</p> <p>21 Q. You came in 1984?</p> <p>22 A. Yes.</p> <p>23 Q. So you had to wait five years for a promotion?</p>



<p style="text-align: right;">Page 21</p> <p>1 A. Exactly. You had certain things you had to 2 learn, basic things you had to learn for those 3 first five years: streets and numbers, your 4 hydrant flow, learn how to do pumping on the 5 truck and -- before you even got -- You was on 6 the ladder truck, but you learned that first. 7 Then you learned to run a front run pumper. So 8 by the time you learn all that, you didn't have 9 time to just come in the door and apply yourself 10 to be something else because they held you to 11 it. 12 Q. Well, who just came in the door and was eligible 13 to apply for battalion chief? 14 A. We had several firefighters -- We had 15 firefighters in there, and we had several guys 16 that had been promoted within the first two 17 years of being a regular firefighter. 18 Q. Were they team leaders? 19 A. Yes. 20 Q. And we've already established you don't have any 21 complaint about -- 22 A. I've got a complaint about time in service. 23 Q. Seniority?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. And that's team leader to lieutenant. You 2 consider that a promotion? 3 A. Yes. 4 Q. And you don't want -- you think that's unfair to 5 you to make you a lieutenant? 6 MR. HORSLEY: Object to the form. 7 A. And the battalion chief promotions of 2005 -- 8 2004. 9 Q. Did you apply for those? 10 A. No. Didn't nobody get a chance to apply. 11 Q. Is that when the captains became battalion 12 chiefs? 13 A. Yes. Battalion chief was a promotion. 14 Q. Did you file an EEOC claim over that in 2004? 15 A. No, I didn't file a EEOC claim. 16 Q. Did you file a lawsuit over that? 17 A. No, I didn't. 18 Q. So Chris Turner is the only person who was not 19 ranked at least -- who was not ranked as a 20 lieutenant? 21 A. Yes. 22 Q. So you think he should not have been allowed to 23 sit for the battalion chief promotion?</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Uh-huh (positive response). 2 MR. HORSLEY: You need to say yes, not 3 uh-huh (positive response). 4 A. Yes. 5 Q. Before I get to that, what firefighters who were 6 not team leaders or lieutenants sat for the exam 7 on the battalion chief promotion? 8 A. Chris Turner was a firefighter. 9 MR. HORSLEY: In 2006? Was that your 10 question? 11 Q. Isn't that the one you're complaining about, the 12 battalion chief promotion in 2006? 13 A. Yes. 14 Q. You're not complaining about any other 15 promotions, are you? 16 A. Other than when they changed the title. I told 17 you I didn't agree -- 18 Q. You don't want to be a lieutenant? You want the 19 City to make you a team leader again? 20 A. Other than when they changed the title and it 21 didn't go to the courts. 22 MR. HORSLEY: Object to the form. 23 It's argumentative.</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I think so, but ... 2 Q. Now, how did his sitting for battalion chief 3 adversely affect your promotion possibilities? 4 A. I didn't have a problem with him sitting per 5 se. I'm talking about all the people that was 6 in there that had less time than I had. 7 Q. Well, that's everybody that was there, wasn't 8 it? 9 A. That's the way they've been promoting. 10 Q. I mean, everybody that sat for the exam had less 11 time -- 12 A. Except for two other guys. 13 Q. All right. Who had been there longer than you? 14 A. Horace Clanton and Robbie Hodge. 15 Q. And he's white? 16 A. Both of them are white. 17 Q. So your position is those two whites should have 18 been promoted to battalion chief? 19 MR. HORSLEY: Object to the form. 20 A. No. I said I have a problem with who sat 21 there. That doesn't have nothing to do with 22 being promoted, who just you was competing 23 against.</p>

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1 Q. Let's go back to my other question about Chris  
 2 Turner.  
 3 Did Chris Turner sitting for the battalion  
 4 chief exam adversely affect your chances to be  
 5 promoted?  
 6 A. No.  
 7 Q. And Chris Turner is a black male?  
 8 A. Yes.  
 9 Q. And you're a black male?  
 10 A. Yes.  
 11 Q. And Gerald Stephens is a black male?  
 12 A. Yes.  
 13 Q. Well, who that sat for the exam do you think  
 14 didn't have enough seniority to sit for it?  
 15 A. Joe Lovvorn, Rod Hartsfield, Matt Jordan, Clay  
 16 Carson, Jason Brown. Let me see who else was in  
 17 there. There's probably one or two -- probably  
 18 one or two more. I can't remember exactly  
 19 everybody.  
 20 Q. Let me show you the list because I want to make  
 21 sure I get all of them. Here's the ones that  
 22 were in the orientation. Who else do you think  
 23 didn't have enough time to sit?

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1 A. John Lankford. And that's it. Well, Jason  
 2 didn't take it.  
 3 Q. Who didn't take it?  
 4 A. Jason Rawls (phonetic), he didn't take it.  
 5 Q. Joe Lovvorn, Rodney Hartsfield, Matt Jordan,  
 6 Clay Carson, Jason Brown, and John Lankford --  
 7 A. Yes.  
 8 Q. -- you think didn't have enough time in grade to  
 9 take the exam?  
 10 A. Yes.  
 11 Q. How long had Joe Lovvorn been with the fire  
 12 department at that time?  
 13 A. Well, they count student time now, but probably  
 14 about five or six years.  
 15 Q. And how about Rodney Hartsfield? How long had  
 16 he been there?  
 17 A. Probably about seven.  
 18 Q. And Matt Jordan? How long --  
 19 A. Probably about five or six. That's not exact,  
 20 but that's counting that date of hire probably,  
 21 not their student firefighter date of hire.  
 22 Q. So this is a regular firefighter --  
 23 A. Yeah, regular firefighter.

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1 Q. So how would you have fashioned the exam for  
 2 battalion chief? What would you have made the  
 3 requirements be?  
 4 MR. HORSLEY: Object to the form.  
 5 A. Just like --  
 6 Q. We can establish first: You're not a testing  
 7 expert, are you?  
 8 A. No, I'm not.  
 9 Q. You don't purport yourself --  
 10 A. Don't purport.  
 11 Q. Well, given that, what would you have made the  
 12 requirements to be?  
 13 MR. HORSLEY: Object to the form.  
 14 A. No cutoff score. More hands-on type  
 15 activities. Seniority, time in grade.  
 16 Q. Is there --  
 17 A. We didn't get any points for any of that. We  
 18 got cut off. That's where my problem is.  
 19 Q. Is there a difference in seniority and time in  
 20 grade?  
 21 A. Yes. Because you have some people that have  
 22 been -- Like Lieutenant Stephens there, he's the  
 23 longest ranking lieutenant in the fire

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1 department. He doesn't have as much time in  
 2 grade as I have, but he's the highest -- longest  
 3 ranking lieutenant. So he's been in a  
 4 lieutenant position now for twelve years.  
 5 THE WITNESS: Right?  
 6 (No response.)  
 7 Q. Well, which do you consider that to be,  
 8 seniority or time in grade?  
 9 A. Time in grade.  
 10 Q. And seniority is just how long you've been with  
 11 the department?  
 12 A. Yes.  
 13 Q. Well, from, say, 2000 on, were there any  
 14 differences in what you did as a team leader  
 15 than what Gerald Stephens did as a lieutenant?  
 16 A. 2000? I couldn't really say because -- I'm  
 17 trying to think about the manpower and who I was  
 18 really supervising at the time. For me I was  
 19 doing what I was -- I was at Station 3, and I  
 20 rarely had a full-time man, which it state the  
 21 team leader can't supervisor a regular full-time  
 22 firefighter. I always just about had student  
 23 firefighters at my station. There was some that



<p style="text-align: right;">Page 29</p> <p>1 was different throughout the City.</p> <p>2 Q. Were your responsibilities and duties any --</p> <p>3 A. Did --</p> <p>4 Q. Let me finish my question.</p> <p>5 -- any different from Gerald Stephens after</p> <p>6 2000?</p> <p>7 A. Yes.</p> <p>8 Q. What were the differences?</p> <p>9 A. I was supervising more students than I was</p> <p>10 career. I wasn't supervising any career until</p> <p>11 here probably the last three or four years when</p> <p>12 they put a full-time man regular out at my</p> <p>13 station.</p> <p>14 Q. When did you start supervising a career?</p> <p>15 A. Probably about 2004 or '5, somewhere around</p> <p>16 there.</p> <p>17 Q. Well, at that point was there any difference in</p> <p>18 what you were doing from Lieutenant Stephens?</p> <p>19 A. No.</p> <p>20 Q. The entire time that you were a team leader that</p> <p>21 he was a lieutenant, was there any difference in</p> <p>22 what the two of y'all did?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Have you ever filed an EEOC charge against the</p> <p>2 City?</p> <p>3 A. No. This is my first one.</p> <p>4 Q. Had you filed a grievance against the City?</p> <p>5 A. No. This is my first one.</p> <p>6 Q. Where do you currently live?</p> <p>7 A. At 106 Pioneer Drive, LaGrange, Georgia 30240.</p> <p>8 Q. And who do you live there with?</p> <p>9 A. My wife.</p> <p>10 Q. And what is her name?</p> <p>11 A. Marzilla. That's M-A-R-Z-I-L-L-A.</p> <p>12 Q. And is that your only wife?</p> <p>13 A. Yes.</p> <p>14 Q. Don't have any ex's?</p> <p>15 A. No.</p> <p>16 Q. Do you have any relatives by blood or marriage</p> <p>17 that live in Lee County?</p> <p>18 A. Yes.</p> <p>19 Q. Who are they?</p> <p>20 A. My mother.</p> <p>21 Q. And what's her name?</p> <p>22 A. Emma, E-M-M-A, Ogletree.</p> <p>23 Q. And where does Emma live?</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. What was the differences?</p> <p>2 A. He could supervise regular full-time</p> <p>3 firefighters and I couldn't.</p> <p>4 Q. That's the only difference?</p> <p>5 A. Yes, that's the difference.</p> <p>6 Q. Well, do you have any problem -- feel any</p> <p>7 deficiency in supervising full-time regular --</p> <p>8 A. No.</p> <p>9 Q. I mean, are they any more difficult or less</p> <p>10 difficult to supervisor than student</p> <p>11 firefighters?</p> <p>12 A. No.</p> <p>13 Q. Supervision at that rank is supervision, isn't</p> <p>14 it?</p> <p>15 A. Yes.</p> <p>16 Q. I mean, do student firefighters do less or more</p> <p>17 than the regular firefighters?</p> <p>18 A. They probably present more of a challenge than a</p> <p>19 regular firefighter.</p> <p>20 Q. So if you can supervisor a student firefighter,</p> <p>21 you can probably supervise a regular</p> <p>22 firefighter, can't you?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. She stays out in Loachapoka.</p> <p>2 Q. Is she employed?</p> <p>3 A. She retired.</p> <p>4 Q. Where did she retire from?</p> <p>5 A. University. Auburn University.</p> <p>6 Q. What did she do at Auburn?</p> <p>7 A. She was housekeeping. She worked in</p> <p>8 housekeeping.</p> <p>9 Q. Any other relatives in Lee County?</p> <p>10 A. Yes.</p> <p>11 Q. All right.</p> <p>12 A. Catherine Calloway.</p> <p>13 Q. Who is she?</p> <p>14 A. My sister.</p> <p>15 Q. Where does she live?</p> <p>16 A. In Loachapoka.</p> <p>17 Q. Who is she married to?</p> <p>18 A. Earnest Calloway.</p> <p>19 Q. What's her employment?</p> <p>20 A. She does home care.</p> <p>21 Q. And what's his employment?</p> <p>22 A. He's retired.</p> <p>23 Q. From where?</p>

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<p>1 A. Southern Stone.</p> <p>2 Q. Do they have any children over the age of, say,</p> <p>3 18, that live in Lee County or --</p> <p>4 A. A daughter.</p> <p>5 Q. What's her daughter's name?</p> <p>6 A. Earnestine.</p> <p>7 Q. Calloway?</p> <p>8 A. Yes.</p> <p>9 Q. And how old is she?</p> <p>10 A. About 34 or 35, somewhere along there.</p> <p>11 Q. And where does she live?</p> <p>12 A. She stays in Loachapoka also.</p> <p>13 Q. Where is she employed?</p> <p>14 A. She works at Wal-Mart in Tallassee, Alabama.</p> <p>15 Q. Any other relatives in Lee County?</p> <p>16 A. Yes. Marjorie Dowdell.</p> <p>17 Q. Who is she?</p> <p>18 A. My sister.</p> <p>19 Q. Where does she live?</p> <p>20 A. In Loachapoka.</p> <p>21 Q. Who is she married to?</p> <p>22 A. Arthur Dowdell.</p> <p>23 Q. What does Marjorie do?</p>	<p>1 Q. Any other relatives in Lee County?</p> <p>2 A. Not in Lee. Well, yeah. I've got some first</p> <p>3 cousins.</p> <p>4 Q. I'll send an interrogatory on that.</p> <p>5 Do you have any relatives in Chambers</p> <p>6 County?</p> <p>7 A. By marriage.</p> <p>8 Q. Who are they? Is that where your wife is from?</p> <p>9 A. Yes.</p> <p>10 Q. What is her maiden name?</p> <p>11 A. Barrow, B-A-R-R-O-W.</p> <p>12 Q. Are her parents still alive?</p> <p>13 A. Yes.</p> <p>14 Q. Do they live in Chambers County?</p> <p>15 A. Yes.</p> <p>16 Q. Has she got brothers and sisters in Chambers</p> <p>17 County?</p> <p>18 A. Yes.</p> <p>19 Q. What are her parents' names?</p> <p>20 A. Walter and Velma Barrow.</p> <p>21 Q. Are they employed?</p> <p>22 A. Retired.</p> <p>23 Q. Walter, what did he retire from?</p>
Page 34	Page 36
<p>1 A. She works for Loachapoka High School.</p> <p>2 Q. What does Arthur do?</p> <p>3 A. He cooks at the athletic Sewell Hall for</p> <p>4 athletes at Auburn University.</p> <p>5 Q. Do they have any children over 18?</p> <p>6 A. Yes.</p> <p>7 Q. What are their names?</p> <p>8 A. Arthur Dowdell, Jr.</p> <p>9 Q. How old is he?</p> <p>10 A. He's about 37.</p> <p>11 Q. And what does he do?</p> <p>12 A. He works at Bruno's, I think, down here in</p> <p>13 Montgomery.</p> <p>14 Q. Any other children they have over 18?</p> <p>15 A. Yes. Kim. Well, she doesn't live -- you can</p> <p>16 strike her. She's out in Colorado.</p> <p>17 Faye.</p> <p>18 Q. Where does she live?</p> <p>19 A. She stays in Loachapoka.</p> <p>20 Q. How old is he?</p> <p>21 A. She's probably 20.</p> <p>22 Q. What does she do?</p> <p>23 A. She goes to Southern Union.</p>	<p>1 A. He had his own business. He runs an auto</p> <p>2 mechanic shop.</p> <p>3 Q. And Velma?</p> <p>4 A. Yeah. She retired from Piggly Wiggly.</p> <p>5 Q. Has your wife got brothers and sisters in</p> <p>6 Chambers County?</p> <p>7 A. Yeah.</p> <p>8 Q. How many?</p> <p>9 A. She got two brothers and one sister.</p> <p>10 Q. Just give me the brothers' names?</p> <p>11 A. Walter, Jr. and Keith.</p> <p>12 Q. And then the sister?</p> <p>13 A. Velma.</p> <p>14 Q. What's her last name?</p> <p>15 A. I'm trying to think of her husband's name.</p> <p>16 Canada, C-A-N-A-D-A.</p> <p>17 Q. Have you got any relatives in Macon County?</p> <p>18 A. Yes, sir. A brother.</p> <p>19 Q. What's his name?</p> <p>20 A. Alfred.</p> <p>21 Q. Ogletree?</p> <p>22 A. Yes.</p> <p>23 Q. And where is he employed?</p>

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1 A. Rubber Plant, Mitchell.  
 2 Q. Is he married?  
 3 A. Yes.  
 4 Q. And what's her name?  
 5 A. Gail.  
 6 Q. What's her maiden name?  
 7 A. Kendall.  
 8 Q. Where is she employed?  
 9 A. She works for a guy that runs a private  
 10 company. I don't know exactly what she does.  
 11 Q. Do they have any children over the age of 18  
 12 that live --  
 13 A. Yes.  
 14 Q. How many?  
 15 A. One.  
 16 Q. What's his or her name?  
 17 A. Her name. Let me see what her name -- Ashley.  
 18 Q. How old is Ashley?  
 19 A. She's 19, I believe.  
 20 Q. And she goes to school?  
 21 A. Yes. She will be going to West Georgia College  
 22 in the fall. She just finished up in Pensacola.  
 23 Q. Do you have any relatives by blood or marriage

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1 in Randolph County?  
 2 A. No.  
 3 Q. Do you have any relatives by blood or marriage  
 4 in Russell County?  
 5 A. No.  
 6 Q. Do you have any relatives by blood or marriage  
 7 in Tallapoosa County?  
 8 A. No.  
 9 Q. Are you a member or have you been a member of a  
 10 church or any civic, social, political clubs,  
 11 organizations in Lee County?  
 12 A. Yes. I belong to a fraternity, but I'm  
 13 inactive.  
 14 Q. What fraternity?  
 15 A. Phi Beta Sigma.  
 16 Q. Is that a social fraternity?  
 17 A. Uh-huh (positive response).  
 18 Q. Yes?  
 19 A. Yes.  
 20 Q. Have you ever lived in Lee County?  
 21 A. Yes.  
 22 Q. When did you live there?  
 23 A. Probably -- It's been about 20 years.

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1 Q. Have you been in Georgia for 20 years?  
 2 A. No. I've been -- Yeah, close to it. Close to  
 3 it.  
 4 Q. Were you a member or did you attend a church  
 5 when you were in Lee County?  
 6 A. Cluster (phonetic). I still got a church down  
 7 in Cluster, a Baptist church.  
 8 Q. Are you a member of a church or any clubs or  
 9 civic organizations in any of the following  
 10 counties: Chambers?  
 11 A. No.  
 12 Q. Macon?  
 13 A. No.  
 14 Q. Randolph?  
 15 A. No.  
 16 Q. Russell?  
 17 A. No.  
 18 Q. Tallapoosa?  
 19 A. No.  
 20 Q. Other than this lawsuit, have you been a  
 21 plaintiff in any other lawsuits?  
 22 A. No.  
 23 Q. Have you ever been sued for anything?

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1 A. No.  
 2 Q. Have you ever given a deposition before?  
 3 A. No. Never given a deposition.  
 4 Q. Have you ever been arrested for anything?  
 5 A. Yes. I missed a court date.  
 6 Q. When was that?  
 7 A. It was about 25 years ago.  
 8 Q. Have you ever been convicted of anything?  
 9 A. No.  
 10 Q. Have you ever made any other discrimination  
 11 claims against anybody?  
 12 A. No.  
 13 Q. You've been with the City since 1984?  
 14 A. Yes.  
 15 Q. And you've been a regular firefighter the whole  
 16 time?  
 17 A. Yes. When I was hired, they didn't have the  
 18 student program.  
 19 Q. You never were --  
 20 What did you do before that? What year were  
 21 you born?  
 22 A. 1959.  
 23 Q. Are you a veteran?

<p style="text-align: right;">Page 41</p> <p>1 A. No.</p> <p>2 Q. What did you do before you joined the Auburn</p> <p>3 Fire Department?</p> <p>4 A. I worked with Allen McCord. He used to work at</p> <p>5 the fire department. He retired now. I</p> <p>6 attended school. I attended Southern Union a</p> <p>7 couple of years, and I attended the University</p> <p>8 of North Alabama a couple of semesters. And I</p> <p>9 came down to Auburn and attended there for about</p> <p>10 a year.</p> <p>11 Q. You went to Southern --</p> <p>12 A. Southern Union.</p> <p>13 Q. Where is it located?</p> <p>14 A. It was in Wadley, Alabama. Still in Wadley,</p> <p>15 Alabama. They got a campus in Opelika now.</p> <p>16 Q. But you went to the Whatley campus?</p> <p>17 A. Uh-huh (positive response).</p> <p>18 Q. Yes?</p> <p>19 MR. HORSLEY: It's Wadley,</p> <p>20 W-A-D-L-E-Y.</p> <p>21 Q. And then you went where in north Alabama?</p> <p>22 A. University of North Alabama.</p> <p>23 Q. Did you graduate from there?</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Did you get a degree?</p> <p>2 A. No.</p> <p>3 Q. What was your course of study at Auburn?</p> <p>4 A. Same: Social and psychology.</p> <p>5 Q. How close were you to graduating?</p> <p>6 A. I probably got about 60 to 80 hours to go.</p> <p>7 Q. Six to eight?</p> <p>8 A. Sixty to eighty. No, not six to eight.</p> <p>9 Q. You applied for -- You said you were promoted to</p> <p>10 team leader in June of '96?</p> <p>11 A. Yes.</p> <p>12 Q. From June of '96 up until, what, February of</p> <p>13 '06, did you apply for a promotion to any other</p> <p>14 ranks in the Auburn Fire Department?</p> <p>15 A. No.</p> <p>16 Q. I think before you were promoted to team leader,</p> <p>17 Gerald Stephens had been promoted to lieutenant;</p> <p>18 is that correct?</p> <p>19 A. Yes. He was promoted in May -- April of '96,</p> <p>20 and I was promoted in June of '96.</p> <p>21 Q. Did you apply for the promotion to lieutenant?</p> <p>22 A. No, I did not.</p> <p>23 Q. Why not?</p>
<p style="text-align: right;">Page 42</p> <p>1 A. No.</p> <p>2 Q. What was your course of study?</p> <p>3 A. Sociology and psychology.</p> <p>4 Q. How long did you go?</p> <p>5 A. I got about three years in. I came back to</p> <p>6 Auburn and did a year. So I got about three,</p> <p>7 three-and-a-half years in.</p> <p>8 Q. So you were a senior?</p> <p>9 A. Yeah. I was close to being a senior.</p> <p>10 Q. Where did you graduate from high school?</p> <p>11 A. Loachapoka.</p> <p>12 Q. What year?</p> <p>13 A. 1977.</p> <p>14 Q. And then you say you attended Auburn University?</p> <p>15 A. I attended Southern Union first. Yeah, I</p> <p>16 attended Auburn University.</p> <p>17 Q. When you came back from north Alabama, where did</p> <p>18 you go?</p> <p>19 A. Auburn University.</p> <p>20 Q. How long were you at Auburn?</p> <p>21 A. A year.</p> <p>22 Q. What years were you there?</p> <p>23 A. '80, '81, I believe.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I had -- I think at the time I had already put</p> <p>2 in for the team leader. But they had -- they</p> <p>3 did the lieutenants assessment before they</p> <p>4 did ...</p> <p>5 Q. But you would have been eligible to have applied</p> <p>6 for lieutenant?</p> <p>7 A. Yes, I would have.</p> <p>8 Q. And then I think sometime -- I'm not sure what</p> <p>9 year -- sometime around '96 there was a captains</p> <p>10 promotion.</p> <p>11 A. Yes. I don't know if it was '96. It was</p> <p>12 somewhere around there because it was -- the</p> <p>13 other four black guys that were working there at</p> <p>14 the time, they were involved in litigation</p> <p>15 against the City. And they promoted Gerald and</p> <p>16 they promoted me right after that settlement.</p> <p>17 Q. Who were the other four?</p> <p>18 A. There was Lieutenant Jessie Strickland,</p> <p>19 Lieutenant Bill Felton, Lieutenant Dexter Card,</p> <p>20 and Chris Turner -- Firefighter Chris Turner.</p> <p>21 And they were involved in litigation about the</p> <p>22 captains promotion.</p> <p>23 Q. About the captains promotion?</p>

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1 A. Yes.  
 2 Q. Do you remember what that litigation was about?  
 3 A. Basically the same thing: About blacks being  
 4 looked over for promotion.  
 5 Q. And do you know how that litigation resolved?  
 6 A. It was settled with them.  
 7 Q. With them what?  
 8 A. I don't know exact settlement. All I know is  
 9 Jessie and Bill and Dexter went home, and they  
 10 settled it with them.  
 11 Q. Have you talked to Jessie Strickland about the  
 12 terms of the settlement or anything that he  
 13 received in the settlement?  
 14 A. Not about the terms.  
 15 Q. Did he tell you anything he received in the  
 16 settlement?  
 17 A. No.  
 18 Q. How about Bill Felton?  
 19 A. No.  
 20 Q. Did you talk to him about the terms of the  
 21 settlement?  
 22 A. No. I haven't even talked to him period.  
 23 Q. Did he tell you anything he may have received in

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1 the settlement?  
 2 A. No.  
 3 Q. How about Dexter Card? Did you talk to him  
 4 about the settlement?  
 5 A. No. Haven't talked or seen him since he left.  
 6 Q. You don't know what he may have received as part  
 7 of the settlement?  
 8 A. No.  
 9 Q. And Chris Turner, did you talk to him as  
 10 part of -- what his part --  
 11 A. No. He hadn't told us.  
 12 Q. Do you know anything he may have received with  
 13 any settlement with the City?  
 14 A. No.  
 15 Q. Well, whenever the captains -- last captains  
 16 promotion was, sometime around '96, did you sit  
 17 for that promotion?  
 18 A. No, I didn't.  
 19 Q. Well --  
 20 A. I wouldn't have been able to sit for that  
 21 promotion because at that time, unless you was  
 22 the right person, I guess -- Chief Langley went  
 23 from firefighter to captain, but it used to be

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1 you had to hold one rank before you could move  
 2 up to the next rank and the next rank.  
 3 Q. Well --  
 4 A. They would have laughed me out of there.  
 5 Q. Why would they have laughed you out?  
 6 A. They wouldn't have let me sit for it because I  
 7 was a firefighter. I hadn't been promoted to  
 8 anything yet.  
 9 Q. Well, was the last captains promotion open for  
 10 firefighters to sit?  
 11 A. No.  
 12 Q. You had to be a lieutenant?  
 13 A. Yes.  
 14 Q. When was the promotion to captain that you're  
 15 talking about Captain Langley, when he went from  
 16 firefighter? Was it before the last one?  
 17 A. Yes, it was before the last one.  
 18 Q. Well, was that part of a settlement --  
 19 A. No.  
 20 Q. -- that anybody could sit for it?  
 21 A. I don't know how it happened, but it happened.  
 22 Q. Well, did you sit for the one that Langley sat  
 23 for?

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1 A. He didn't sit for any. They just come got him  
 2 and made him captain.  
 3 Q. Before the February of '06 battalion chief exam,  
 4 there were no other captain exams that you  
 5 remember other than the one that was sometime  
 6 around '96?  
 7 A. Yes.  
 8 Q. Is that correct what I said?  
 9 A. That's correct.  
 10 Q. And then there was a long period of time when  
 11 there was no lieutenant exams given?  
 12 A. Yes. They just started -- They didn't promote  
 13 any more lieutenants after '96. Gerald was the  
 14 last one. It was two left. It was Gerald and  
 15 Andrew Terry Langley. He was there. He was  
 16 ahead of Gerald. He was a senior lieutenant at  
 17 the time, and he retired and then Gerald became  
 18 a senior lieutenant.  
 19 Q. Well --  
 20 A. They started promoting team leaders.  
 21 Q. And is it your testimony that the last  
 22 lieutenant exam, the one that Gerald sat for,  
 23 that there was both a seniority and a time in

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1 grade requirement?

2 A. I'm going to elaborate on that. When that

3 litigation was going on -- I'm not saying Gerald

4 is not qualified, but he was black first.

5 That's why they promoted him, because they had

6 been exposed about how they were treating us

7 down there and how they were promoting us. I'm

8 talking about minorities, African-Americans.

9 And then they went right on -- In the complaint

10 they complained about it not being any black

11 team leaders. They went right on and promoted

12 me after they promoted Gerald, and we have --

13 and they hadn't promoted a minority since -- an

14 African-American since then.

15 Q. Well, are you saying you were promoted to team

16 leader because you were black?

17 A. I didn't say I wasn't qualified, but yes.

18 Q. And Gerald was promoted to lieutenant because he

19 was black?

20 A. Yes.

21 Q. Well, has there ever been another

22 African-American or black who sat for team

23 leader other than Chris Turner?

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1 A. No. There's no -- It's never been over seven or

2 eight that worked there at one time, and it's

3 not been over three worked there in the last --

4 full-time firefighters where they could have sat

5 for anything in the last twelve years. Chief

6 Langley had made it known to me that he was

7 intending to hire some minorities. He said, I

8 know I need to hire some blacks; I know I need

9 to hire some blacks. When the opportunity

10 presented itself with two qualified guys --

11 that's Jeremy Patterson and William Thompkins --

12 he didn't hire them. And they were from the

13 student program.

14 Q. Okay. I'm going to get to those in a minute,

15 but let me ask you this, Mr. Ogletree.

16 Since the court order that you've told me

17 about with Dexter and Jessie and Bill, has any

18 test or any promotion procedure at the fire

19 department required seniority or time in grade

20 since the settlement of those claims that they

21 made?

22 A. Let me see. I guess that battalion chief

23 promotion did because I guess that's how they

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1 got it: Dean Garrett, Johnny Lawrence, Danny

2 Leverette, and the late Jimmy Brown, because --

3 All I know is Chief Garrett was my boss, and he

4 went up the hill one day with two bars on and he

5 came back with three and said, call me chief

6 now. And to me that's a promotion, because they

7 take the same thing and turn around and tried to

8 test me for it when they gave it to them.

9 Q. And that was when?

10 A. That was in 2005, I believe. Yeah, about 2004

11 or 2005. I'm not sure on that date.

12 Q. And when that occurred, there were no more

13 captains, were there?

14 A. No.

15 Q. And I think I've asked you this, but just for

16 the record, you didn't file an EEOC claim or

17 lawsuit over that?

18 A. No. That's kind of part of this.

19 Q. Well, what is that part of this?

20 A. Because of the inconsistency. Test today,

21 interview tomorrow, somebody get gave a

22 promotion the next day.

23 Q. Somebody what?

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1 A. Get gave a promotion the next week. And

2 coincidentally ain't nothing happened for

3 African-Americans down there. And I know I'm

4 qualified, and I do my job.

5 Q. Well, is there anybody that you know that sat

6 for the battalion chief promotion in '06 that

7 didn't think he was qualified?

8 MR. HORSLEY: Object to the form.

9 A. Yeah, I can't say. I can't ...

10 Q. Is there anybody that sat for that promotion in

11 February of '06 that didn't think he did his

12 job?

13 MR. HORSLEY: Object to the form.

14 A. I don't know that either.

15 Q. Do you agree with me that there has to be some

16 procedure in place to decide who gets promoted?

17 A. That's the key word: Some procedure.

18 Q. You agree with me, right?

19 A. Some procedure, yes.

20 Q. And do you agree with me that that procedure is

21 a responsibility of the City of Auburn?

22 A. I don't know if I would agree with that.

23 Q. Who should make the decision as to the



<p style="text-align: right;">Page 53</p> <p>1 procedure?</p> <p>2 A. Probably I would think that the men should have</p> <p>3 a lot of input because we do the jobs every day.</p> <p>4 Q. So the folks that are -- the firefighters --</p> <p>5 A. Yes.</p> <p>6 Q. -- should decide what the procedure is for</p> <p>7 promotion?</p> <p>8 A. Collectively, and send some up and -- I know</p> <p>9 they would have the final say, but they should</p> <p>10 have more input than they do.</p> <p>11 Q. Do you know of any fire department where the men</p> <p>12 have the say-so as to who gets promoted?</p> <p>13 A. I can't answer that.</p> <p>14 Q. Well --</p> <p>15 A. I do know one thing, though: The way they</p> <p>16 tested us was unfair and discriminatory.</p> <p>17 Q. Because you didn't --</p> <p>18 A. No. I talked to Mr. Lamar about it before. I</p> <p>19 was concerned about the test before he gave it,</p> <p>20 if he recall, and he say don't worry about it;</p> <p>21 you'll pass. Chief Garrett had said they had</p> <p>22 went through it and seen some of the questions</p> <p>23 and had helped with the test. I was concerned</p>	<p style="text-align: right;">Page 55</p> <p>1 lieutenant to be a promotion?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Was that posted?</p> <p>4 A. No. It was petitioned, but it wasn't posted.</p> <p>5 Q. Who is Jeremy Patterson and William Thompkins?</p> <p>6 You said they were --</p> <p>7 A. They were in the student program. They had been</p> <p>8 the only two African-Americans besides one more,</p> <p>9 and his name was Owny (phonetic), and he had</p> <p>10 disciplinary problems. I think he had gotten</p> <p>11 into some trouble so he got fired.</p> <p>12 Q. When was Jeremy Patterson there?</p> <p>13 A. I want to say between 2003 and 2006 I believe</p> <p>14 they were there, both of them.</p> <p>15 Q. And when was William Thompkins there?</p> <p>16 A. About the same time.</p> <p>17 Q. And why wasn't Patterson hired?</p> <p>18 A. I have no idea. I wasn't privy to that</p> <p>19 information. I knew he did apply for a job.</p> <p>20 Q. Did he talk to you about why he wasn't hired?</p> <p>21 A. He thought it was because he was black.</p> <p>22 Q. Did he file a complaint or lawsuit or anything?</p> <p>23 A. No. He went on and got his engineering degree</p>
<p style="text-align: right;">Page 54</p> <p>1 because they were battalion chiefs, and they</p> <p>2 didn't take the test. And I had been seeing too</p> <p>3 much of this over the years. I'm not a</p> <p>4 complainer, but when something is wrong, it's</p> <p>5 wrong.</p> <p>6 Q. You've seen too much of what over the years?</p> <p>7 A. Discrepancies in promotional procedures. People</p> <p>8 getting jobs that are not even being posted.</p> <p>9 People go in and sit and interview and get a</p> <p>10 job.</p> <p>11 Q. What promotions have there been when it wasn't</p> <p>12 posted?</p> <p>13 A. Training chief in 2005. That's when Lieutenant</p> <p>14 Stephens filed that grievance.</p> <p>15 Q. Did you file a grievance?</p> <p>16 A. No.</p> <p>17 Q. Any other promotions that weren't, in your</p> <p>18 opinion, posted?</p> <p>19 A. The battalion chief for Chief Garrett -- Chief</p> <p>20 Leverette.</p> <p>21 Q. When the captains became battalion chiefs?</p> <p>22 A. It's a promotion to me.</p> <p>23 Q. Well, did you consider the team leader to</p>	<p style="text-align: right;">Page 56</p> <p>1 and is working now. William Thompkins thought</p> <p>2 the same thing.</p> <p>3 Q. Thought he was black?</p> <p>4 A. Because he was black. These guys were under my</p> <p>5 immediate supervision for one time. They</p> <p>6 confided a lot in me, you know.</p> <p>7 Q. Have there been any white student firefighters</p> <p>8 that weren't hired?</p> <p>9 A. I'm not concerned about that. I --</p> <p>10 Q. I'm asking you that because it's really easy to</p> <p>11 say I didn't get hired because I'm black. You</p> <p>12 can't say -- You tell me: Are there any white</p> <p>13 firefighter students that didn't get hired?</p> <p>14 A. Yes.</p> <p>15 Q. Did they not get hired because they were white?</p> <p>16 MR. HORSLEY: Object to the form.</p> <p>17 A. I don't know, but I know the ratio of the hiring</p> <p>18 to minorities to the white students is</p> <p>19 overwhelming. It's about 95, 96 to one.</p> <p>20 Q. But you got hired?</p> <p>21 A. And I was told that I'm hiring you because</p> <p>22 you're black.</p> <p>23 Q. Who told you that?</p>

Page 57	Page 59
<p>1 A. Chief Ellis Mitchell. Before the federal 2 government tells me to hire some more blacks, 3 I'm hiring you. He was proactive about the 4 situation. 5 Q. Have you talked to Thompkins or Patterson -- 6 A. I haven't talked to Patterson. I communicate 7 with Thompkins. All of us are frat brothers -- 8 fraternity brothers, but I just talk to him 9 about his job. He calls me from time to time. 10 Q. Where is he working now? 11 A. He's in the Atlanta area. 12 Q. Have you talked to Chief Langley about why 13 either one wasn't hired? 14 A. No. Chief Langley -- The only thing Chief 15 Langley used to tell me was I know I need to 16 hire some blacks, and we didn't have much 17 conversation. 18 Q. When did you first learn about the battalion 19 chief promotion? 20 A. They sent a letter out. You have it, the same 21 letter you showed Gerald. 22 Q. First of all, I'm going to show you what was 23 marked as Defendant's Exhibit Number 1 to</p>	<p>1 Q. Which chief? 2 A. Chief Langley. 3 Q. Did you have any conversation with him when he 4 gave it to you? 5 A. I might have -- I probably spoke to him. I know 6 I spoke to him about the test I just said, you 7 know, because they was talking about giving a 8 test then because Chief Garrett had talked to me 9 about they were going over questions, and that 10 was my immediate supervisor. 11 Q. So even before you got Defendant's Exhibit 12 Number 1, the notice, you had talked to Chief 13 Garrett -- 14 A. And he had said they had been working on a test 15 for battalion chief. 16 Q. Did you ask him what was the test about or how 17 was it or what was he -- 18 A. He just said they threw out some questions. 19 They looked at some questions and determined 20 some questions that were good for the test and 21 all that. And he made the statement to me that 22 he didn't think it was fair to us older guys 23 because it give the younger guys fresh out of</p>
Page 58	Page 60
<p>1 Gerald's deposition. That's the posted notice, 2 and it was posted, I think, February 16, 2006. 3 Did you see that when it went up? 4 A. Yes, I did. 5 Q. Did you see it about February 16? 6 A. Somewhere around there. 7 Q. Within a day or two? 8 A. Uh-huh (positive response). 9 Q. Yes? 10 A. Yes, sir. 11 Q. So you knew at that time there would be a 12 promotion procedure? 13 A. Yes. 14 Q. And Gerald said something about e-mails. Do you 15 get e-mails? 16 A. Yes. We can read the City -- That's how we 17 communicate. 18 Q. So did this come out -- this Number 1, did this 19 come out on an e-mail? 20 A. I don't know if it came out on e-mail. It 21 probably did, but I got mine from the chief. 22 Q. The chief handed you one? 23 A. Yeah, I got it.</p>	<p>1 college a better chance. 2 Q. Dean Garrett told you that he did not think it 3 was fair to the older guys? 4 A. Yeah. He said he discussed this with Chief 5 Langley. 6 Q. Well, what was there about it that he didn't 7 think was fair? 8 A. Just the fact that they were testing us on that 9 type of material for the job, I guess. That's 10 what I took it to mean. And that you had guys 11 that were working on their master's degrees 12 where I hadn't picked up a book and studied like 13 that for years, that they probably were going to 14 have an advantage going in where I had to pick 15 up a book and start studying from that point of 16 getting the books and material and going 17 forward. 18 Q. Well, he didn't say he didn't think it was going 19 to be fair to blacks. He said he didn't think 20 it was going to be fair to the older guys? 21 A. He said he didn't think it would be fair to the 22 older guys. 23 Q. Who else was taking it that would be considered</p>



<p style="text-align: right;">Page 61</p> <p>1 an older guy?</p> <p>2 A. I guess he was talking about myself, Horace</p> <p>3 Clanton, Robbie Hodge, Gerald Stephens.</p> <p>4 Q. And Clanton and Hodge are white males?</p> <p>5 A. Yes.</p> <p>6 Q. Any other conversations you had with Dean</p> <p>7 Garrett about the test other --</p> <p>8 A. I was concerned that he had seen some of the</p> <p>9 questions. I didn't say it to him, but I was</p> <p>10 like, I thought they were going to order the</p> <p>11 test from somebody.</p> <p>12 Q. Well, do you know for a fact whether he saw</p> <p>13 questions that were actually --</p> <p>14 A. That was him telling me. I can't verify that.</p> <p>15 Q. And you didn't tell him you were concerned that</p> <p>16 he saw the questions?</p> <p>17 A. I didn't say it to him. No, I didn't.</p> <p>18 Q. What else did y'all actually discuss other than</p> <p>19 you said he told you he had looked at some of</p> <p>20 the questions, and he didn't think it was going</p> <p>21 to be fair to the older guys?</p> <p>22 A. That was about it.</p> <p>23 Q. And then Chief Langley gives you Defendant's</p>	<p style="text-align: right;">Page 63</p> <p>1 anybody about the written test?</p> <p>2 A. No. It was about 30 days later when I went to</p> <p>3 pick up my books, 30-something days later. I</p> <p>4 just mentioned it to Chief Lamar there that -- I</p> <p>5 said, a test, you know. It just kind of like --</p> <p>6 You know, it bothered me.</p> <p>7 Q. Well, I'm going to get to that. But as a result</p> <p>8 of this February 17, 2006 Defendant's Exhibit</p> <p>9 Number 2, did you make any complaints to anybody</p> <p>10 about having to take a written test?</p> <p>11 A. No. We talked -- It was two or three of us</p> <p>12 talked among ourselves, the other older guys:</p> <p>13 Horace Clanton, Robbie Hodge.</p> <p>14 Q. And y'all didn't want to take a written test?</p> <p>15 A. We just didn't think it was right.</p> <p>16 Q. Y'all probably wanted it to be seniority, didn't</p> <p>17 you?</p> <p>18 A. Not just necessarily seniority, but if you're</p> <p>19 going to give a written test, let it count for a</p> <p>20 certain percentage and let you move on to the</p> <p>21 next phase. My particular thing is that cutoff</p> <p>22 score that the City imposed.</p> <p>23 Q. Do you think it's too high or too low?</p>
<p style="text-align: right;">Page 62</p> <p>1 Exhibit Number 1?</p> <p>2 A. Yes.</p> <p>3 Q. And did you have any conversation with him about</p> <p>4 the procedure at that point?</p> <p>5 A. No, I didn't.</p> <p>6 Q. I assume you received this memo, Defendant's</p> <p>7 Exhibit Number 2, which is dated February 17</p> <p>8 that tells you who can be eligible and that a</p> <p>9 written exam will be part of the assessment</p> <p>10 process. Did you receive that?</p> <p>11 A. Yes.</p> <p>12 Q. And was that e-mailed to you or posted?</p> <p>13 A. I think I got mine e-mailed.</p> <p>14 Q. Does it come e-mail to your house?</p> <p>15 A. Everybody got e-mail, and they just click -- all</p> <p>16 the officers, and they just click on the</p> <p>17 computer.</p> <p>18 Q. So you would have probably received that</p> <p>19 February 17 --</p> <p>20 A. Yeah. If I was on duty.</p> <p>21 Q. If you weren't on duty, the next time --</p> <p>22 A. The next day, yeah.</p> <p>23 Q. At that point did you make any complaints to</p>	<p style="text-align: right;">Page 64</p> <p>1 A. That's the first time they ever gave a test with</p> <p>2 a cutoff score.</p> <p>3 Q. How do you know the City imposed that?</p> <p>4 A. I got paperwork that says it imposed it.</p> <p>5 Q. What do you think the cutoff score should have</p> <p>6 been?</p> <p>7 MR. HORSLEY: Object to the form.</p> <p>8 A. I have no idea. That's something they had to</p> <p>9 have experts determine.</p> <p>10 Q. Well, do you know whether or not the City had</p> <p>11 any expert to determine the cutoff score?</p> <p>12 A. Thirty days.</p> <p>13 Q. What?</p> <p>14 A. No. I don't believe they did.</p> <p>15 Q. Why don't you believe that?</p> <p>16 A. Because it plainly states in our grievance</p> <p>17 hearing that the City chose to impose a 70,</p> <p>18 which is the cutoff score.</p> <p>19 Q. Do you know Mr. Hancock here down at the end of</p> <p>20 the table?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Have you had any conversations with Mr. Hancock</p> <p>23 about the cutoff score?</p>

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1 A. No, I haven't.  
 2 Q. Have you had any conversations with Mr. Hancock  
 3 about who came up with the 70 percent figure?  
 4 A. No.  
 5 Q. Have you had any conversations with him about  
 6 who imposed the cutoff?  
 7 A. No.  
 8 Q. Let me show you Defendant's Exhibit Number 3,  
 9 which is a memo dated February 23, 2006 that  
 10 opened it up to others that were not  
 11 non-probationary lieutenants.  
 12 A. Yes. That's about the time.  
 13 Q. And you would have received that on or about  
 14 February 23, 2006?  
 15 A. Yes.  
 16 Q. And did you make any complaints to anybody about  
 17 that?  
 18 A. No. It kind of struck me that -- Probationary  
 19 lieutenants, that kind of struck me, because the  
 20 City policy states that probationary employees  
 21 in the fire department can't be eligible for a  
 22 promotion within a year.  
 23 Q. Back up.

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1 The City policy says what?  
 2 A. That -- In the fire and the police department,  
 3 that if you work for them and you go from one  
 4 rank to the next, you can't be eligible for a  
 5 promotion until after you complete that -- you  
 6 have to do a year in that promotion step to be  
 7 able to apply for the next promotion. Now, the  
 8 fire department policy I guess states another  
 9 thing, but the City policy states what I just  
 10 told you.  
 11 Q. So according to the City policy, in order to  
 12 apply for promotion, as you understand it, to  
 13 battalion chief, you would have had to have been  
 14 in what position for a year?  
 15 A. Lieutenant's position for a year.  
 16 Q. Were you in the lieutenant's position for a  
 17 year?  
 18 A. No. That's why I was satisfied with the team  
 19 leader. I was eligible as team leader.  
 20 Q. Well, was there anybody -- a team leader or  
 21 lieutenant that had not been there for a year?  
 22 A. All of us had been there for a year, but we went  
 23 from team leader to lieutenant.

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1 Q. That's my question. Are you saying only people  
 2 who had been lieutenants for a year should have  
 3 been eligible for battalion chief?  
 4 A. It's not me saying it. That's City policy.  
 5 Q. And you agree with the City policy is what  
 6 you're saying?  
 7 MR. HORSLEY: Object to the form.  
 8 A. I work for the City. I just work --  
 9 Q. Here's where I'm confused. Are you saying you  
 10 should or should have not been eligible?  
 11 A. If those guys were eligible, I should have been.  
 12 Q. I'm not asking about those guys.  
 13 A. Yeah, I was eligible.  
 14 Q. Why were you eligible?  
 15 A. I wasn't eligible according to the City policy.  
 16 Q. You were not?  
 17 A. But I was eligible according to this memo from  
 18 Chief Langley.  
 19 Q. All right. You were not eligible to apply for  
 20 battalion chief per City policy?  
 21 A. Yeah.  
 22 Q. And why is that, because you had not been a  
 23 lieutenant for a year?

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1 A. City policy states if you work for the fire  
 2 department or police department and you go from  
 3 one position to the next that you can't be  
 4 eligible for a promotion to within a year's  
 5 period.  
 6 Q. So, then, the only two people that would have  
 7 been eligible for promotion to battalion chief  
 8 would have been Gerald Stephens and Chris  
 9 Turner? Is that your position?  
 10 A. Yes.  
 11 MR. HORSLEY: Is this a decent time  
 12 for a break?  
 13 MR. MORGAN: Sure.  
 14 (Brief recess.)  
 15 Q. (Continuing by Mr. Morgan) Let me show you  
 16 Defendant's Exhibit Number 4, which I think is  
 17 the sign-in sheet for the orientation. Did you  
 18 attend the orientation?  
 19 A. Yes, I did.  
 20 Q. Who was present?  
 21 A. It was all of these guys except -- I think just  
 22 about everybody was present that signed off on  
 23 here.

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1 MR. HANCOCK: Randall, let me  
2 interrupt. The exhibits you're  
3 referring to, are those the  
4 exhibits to Mr. Stephens'  
5 deposition?  
6 MR. MORGAN: They are.  
7 MR. HANCOCK: Are you going to attach  
8 those to this or do you want to  
9 have one set?  
10 MR. MORGAN: My intention was to just  
11 keep the same numbers going.  
12 MR. HANCOCK: I just --  
13 MR. MORGAN: I don't see any need to  
14 renumber and put extra exhibits in  
15 there.  
16 MR. HANCOCK: Okay.  
17 MR. HORSLEY: I agree.  
18 Q. Who was there --  
19 A. Dennis might have not been there, because he  
20 didn't take the test.  
21 Q. Who was there to explain what was going on or  
22 what was going to happen?  
23 A. I don't remember the guy's name, but he got up

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1 on stage. And I believe Mr. Reeves was there  
2 and Chief Lamar was there.  
3 Q. The guy that got up on stage --  
4 A. He was a representative from CWH.  
5 (Off-the-record discussion.)  
6 Q. How long did the orientation session last?  
7 A. I want to say about an hour. You could give or  
8 take.  
9 Q. And what do you remember Steve Reeves saying?  
10 A. I believe he just passed out some things for us,  
11 and they got our signature. Took up our  
12 signature. And the guy from CWH kind of took  
13 the show and started explaining the different  
14 parts of the test and thing.  
15 Q. And then what do you remember Lee Lamar saying  
16 or doing?  
17 A. I can't remember if he did anything or said  
18 anything.  
19 Q. And the guy from CWH I guess explained the  
20 assessment process?  
21 A. Yeah, that's what he did.  
22 Q. And did he explain the written test?  
23 A. Yes. He went through some parts of it and how

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1 it worked, you know. That's all I remember him  
2 doing.  
3 Q. Did he tell you there would be a cutoff score?  
4 A. Not to my knowledge.  
5 Q. When did you learn there would be a cutoff  
6 score?  
7 A. I think Mr. Lamar told me that it would be --  
8 you would have to make a 70. I'm not sure when  
9 it was.  
10 Q. Was it before or after this orientation?  
11 A. I don't know if it was before or after. I can't  
12 really recall.  
13 Q. Well, did the guy that was from CWH --  
14 I assume you don't remember his name?  
15 A. No, I don't.  
16 Q. -- did he indicate to you that certain people  
17 would not be allowed to go to the second part of  
18 the procedure?  
19 A. Not to my knowledge.  
20 Q. What do you remember him telling you about the  
21 written test?  
22 A. He just explained the different components and  
23 how they go about making the test. He told us

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1 about the company. I kind of -- it kind of -- I  
2 mentioned it to one of the guys when we left.  
3 It looked like to me he was up there touting his  
4 own successes more than really trying to fill us  
5 in on anything.  
6 Q. Well, did he tell you what procedure had been  
7 used to come up with the written test?  
8 A. He might have. I can't say if he did or didn't.  
9 Q. And did he tell you what the next part of the  
10 test was after the written part?  
11 A. No, he didn't. Chief Lamar and them had said it  
12 was the assessment part. I knew it was an  
13 assessment part because everybody that's  
14 there -- every guy promoted was familiar with  
15 in-baskets because we did that in the structured  
16 interviews. It was more like hands-on,  
17 job-related stuff that you did every day.  
18 Q. So let me be clear. Was it your understanding  
19 that you would take a written test --  
20 A. Yeah.  
21 Q. -- and then --  
22 A. Assessment.  
23 Q. But your testimony is that you didn't understand

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1 that not everybody would get to go to the  
 2 assessment part?  
 3 A. I didn't know when I learned of the 70. I can't  
 4 say --  
 5 Q. It could have been before or it could have been  
 6 after?  
 7 A. That's right.  
 8 Q. You certainly knew it by the time you took the  
 9 test?  
 10 A. Yeah, I knew it by the time I took it.  
 11 Q. Defendant's Exhibit Number 5, it says Auburn  
 12 Fire Division Orientation Manual, Promotional  
 13 Written Test, and Assessment Center.  
 14 I assume you were given that at the  
 15 orientation session?  
 16 A. Yes.  
 17 Q. And who handed that out?  
 18 A. I couldn't say who handed it out, but I do have  
 19 it.  
 20 Q. And did the person from CWH go over this with  
 21 you?  
 22 A. Yeah. He went over -- this is what -- He went  
 23 over brief parts of it. He just touched on each

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1 part of it.  
 2 Q. Did he go over it page by page?  
 3 A. I believe he had a slide show up there, and he  
 4 was punching it. And he was going to certain  
 5 topics and going through -- he touched on the  
 6 whole book.  
 7 Q. For instance, I just happened to turn to  
 8 strategies for taking the test. Would he have a  
 9 slide up that would say strategies for taking  
 10 the test and have these things --  
 11 A. He had some of them. I don't know -- I can't  
 12 recall exactly what he did show us, but I know  
 13 he gave me this packet because I have it. And  
 14 we went through, and he touched on different  
 15 topics.  
 16 Q. And that book is something you were able to take  
 17 home with you?  
 18 A. Yes.  
 19 Q. Did you make any complaints that day to CWH,  
 20 Steve, or Lee Lamar about the procedure?  
 21 A. Not the day of -- Talking about of orientation?  
 22 Q. Yeah. March 3 --  
 23 A. No, I didn't.

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1 Q. -- 2006.  
 2 A. Like I said, I mentioned -- the only thing I  
 3 mentioned was I was concerned about it to  
 4 Mr. Lamar the day I signed for those books.  
 5 Q. And that's going to be after this actually,  
 6 March 3.  
 7 A. Okay. It was after.  
 8 Q. But the day when you had -- when there was the  
 9 orientation and you had the guy that was there  
 10 that was explaining the test and the assessment  
 11 center, Steve and Lee Lamar, you didn't make any  
 12 objection --  
 13 A. No.  
 14 Q. -- at that point about any of the process, did  
 15 you?  
 16 A. No.  
 17 Q. Now, here is a document dated -- Defendant's  
 18 Exhibit 6 dated March 3, 2006. I assume you  
 19 remember receiving that document.  
 20 A. Yes.  
 21 Q. Is that another one that came out via e-mail?  
 22 A. It probably did, but I know I got a copy of  
 23 this. I can't say if it came --

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1 Q. On or about March 3, 2006?  
 2 A. Yes.  
 3 Q. And in here it clearly states that -- I say it  
 4 does. Does this tell you about a cutoff score?  
 5 A. Yeah. Minimum score of 70 must be achieved. So  
 6 if I got this, I learned about it around about  
 7 this time.  
 8 Q. You don't remember if you knew about it before,  
 9 but you knew about it for certain by March 3,  
 10 2006?  
 11 A. Yeah, thereabouts. Because if I wasn't on duty,  
 12 I didn't get it that day but the next day.  
 13 Q. So within --  
 14 A. One or two days either way.  
 15 Q. So we know for certain you knew about it by  
 16 then?  
 17 A. Yes, sir.  
 18 Q. And whether you knew about it before, you just  
 19 can't remember?  
 20 A. I don't know.  
 21 Q. When you received this March 3 memo from Lee  
 22 Lamar, did you complain to anybody at that time  
 23 about the cutoff score?

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1 A. If he gave it to me, that's the day I spoke to  
2 him. That would be around about the day I spoke  
3 to him about I was concerned about taking the  
4 test with the score -- the cutoff score.

5 Q. Let's see. This is March 3, 2006 when you  
6 picked up your stuff. This is Defendant's  
7 Exhibit 7. And then Defendant's Exhibit 8 I  
8 think is where you actually signed on March 3,  
9 2006 that that's when you got your stuff.

10 A. That would have been the day I spoke with him  
11 (indicating).

12 Q. What did you say to Mr. --

13 A. I just kind of said, a test; I don't know. He  
14 said, well, you're a smart guy; you'll pass it.  
15 And I said, well, I just don't know. And I just  
16 kind of walked out and left with the books.

17 Q. Did you say anything more definitive to him  
18 than, a test; I don't know?

19 A. I didn't say anything other than that. He just  
20 kind of acknowledged it, and I kind of  
21 acknowledged it and turned around and walked  
22 out.

23 Q. So the only thing you said to him was, a test; I

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1 don't know?

2 A. Yeah.

3 Q. That's when you signed that you received the  
4 book, and that's the day that Lee would have  
5 handed you that piece of paper telling you about  
6 the test?

7 A. Yes.

8 Q. And you said, a test; I don't know?

9 A. Yes.

10 (Defendant's Exhibit 14 marked for  
11 identification.)

12 Q. Let me show you Defendant's Exhibit 14. Is this  
13 your application for the battalion chief  
14 promotion?

15 A. Yes.

16 Q. I think the test was given April 10 of 2006.

17 A. Somewhere thereabouts.

18 Q. Tell me what you did to study for the test.  
19 What did you do?

20 A. I believe it was three or four different books.  
21 I went through and read the chapters, and I  
22 really put some time in. I studied. My wife  
23 was kind of worried about me I was studying so

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1 hard at the dining room table. You know, I seen  
2 a lot of material, went over a lot of material.

3 And as I was studying, I was like, you know, a  
4 lot of this stuff is for -- to me, it seemed  
5 like it was for bigger departments. And it  
6 really strayed away from what we really do  
7 actually day-to-day operations with all the --

8 Q. Wait. When you were studying, you were doing  
9 what, now?

10 A. I said I did a lot of reading, and my wife got a  
11 little worried about it because I was trying to  
12 study so hard and make sure I did as well as I  
13 could on the test.

14 Q. But you thought something was getting away?

15 A. The material that we was reading, chief officers  
16 and stuff, a lot of that to me seemed like it  
17 was for maybe a department the size of  
18 Montgomery where it had district chiefs. You  
19 know, you had a bigger rank structure.

20 Q. Well, are these the books that you had that the  
21 City gave you: IFSTA Chief Officer?

22 A. Yes.

23 Q. You read that book?

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1 A. Yeah. I read chapters. I didn't read all of  
2 it. I read most of it.

3 Q. You didn't read it all, but you read most of it?

4 A. Yes.

5 Q. And you decided that that book didn't apply to  
6 the City of Auburn?

7 A. I didn't decide. I said --

8 MR. HORSLEY: Object to the form.

9 A. I didn't decide. I just said to myself that  
10 some of this stuff looked like it was a bit much  
11 for the department a size of Auburn. That  
12 didn't stop me from trying to read and  
13 comprehend it.

14 Q. What was there in the IFSTA Chief Officer book  
15 that you thought was a bit much for the City of  
16 Auburn?

17 A. A lot of that was pertaining to more of a  
18 district chief.

19 Q. What's the difference in a district chief and a  
20 battalion chief?

21 A. A district chief runs an entire quadrant of a  
22 city.

23 Q. And what does a battalion chief do?



<p style="text-align: right;">Page 81</p> <p>1 A. Battalion chief just oversees about three to 2 four stations. We don't have but five stations, 3 and that's what he does. But, you know, it was 4 a lot more responsibility. 5 Q. For who? 6 A. A district chief has a lot more responsibility. 7 Q. So you thought the IFSTA Chief Officer referred 8 more to a larger city and district chiefs? 9 A. Yeah, I did. I'm not a expert, but that's what 10 I thought. 11 Q. Did you complain to anybody about that before 12 the written test? 13 A. No. I just read. I just studied my material. 14 Q. And did you read the Effective Supervisory 15 Practices? 16 A. Yes. 17 Q. Now, had you had that book before? 18 A. Yes. 19 Q. Where all had you had that before? 20 A. That was a class that the City puts on and 21 requires the employees to go to that's in 22 supervisory positions. 23 Q. You had already had that?</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. And you read parts of it? 2 A. Yes. 3 Q. How did you decide what parts you were going to 4 read? 5 A. I just -- You know, everybody got strong and 6 weak areas in stuff they do, and I looked at 7 things that I wasn't quite sure of. Some things 8 I knew. Some things I wasn't quite sure of, and 9 I read those. I spent a little more time -- 10 when I say -- I spent more time on some things 11 than others. 12 Q. So if you thought you knew it, you didn't spend 13 as much time on it? 14 A. Yes. 15 Q. And you had had some exposure, maybe not to this 16 book, but to the tactics books? 17 A. Yes. 18 Q. As you reviewed this Fire Officers' Handbook of 19 Tactics, was there anything in this book you 20 didn't think applied to the City of Auburn? 21 A. No. 22 Q. You thought that book was applicable to what 23 went on at Auburn?</p>
<p style="text-align: right;">Page 82</p> <p>1 A. Yes. 2 Q. And then that was another book that you were 3 given to review? 4 A. Yes. 5 Q. Because questions were going to come from it on 6 this test? 7 A. Yes. 8 Q. Was there anything about that book that you 9 didn't think applied to the battalion chief 10 promotion? 11 A. No. That was kind of good. 12 Q. And did you read that whole book or just parts 13 of it? 14 A. Parts of it because I took that class, and I was 15 pretty familiar with it. 16 Q. And then you had the Fire Officers Handbook of 17 Tactics? 18 A. Yeah. 19 Q. Did you read that book? 20 A. Yes. I read some parts of it. 21 Q. Had you been exposed to that book before? 22 A. No. Not that book per se but some tactics and 23 firefighting books.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes. Because you got -- any different structure 2 fire going to be different. So that was more 3 telling you about attacks and plans. 4 Q. And that's pretty uniform? 5 A. Pretty uniform. 6 Q. And then the fourth book was Structural 7 Firefighting? 8 A. Yeah. That's another one that's pretty true to 9 form too. 10 Q. That's a uniform book? 11 A. Yeah. 12 Q. Were you exposed to that book before at the City 13 of Auburn? 14 A. Not -- I've took some classes -- You know, you 15 got a little building construction and stuff and 16 components of different classes I took over the 17 years. It was made up of that. 18 Q. And you thought that book was applicable to what 19 went on at the City of Auburn? 20 A. Yeah. 21 Q. Did you form any study groups with anybody? 22 A. No. I just studied at home. 23 Q. Did you study anything other than the -- I</p>

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1 assume that's the four books that were given to  
 2 you by the City for this?  
 3 A. Yes.  
 4 Q. Did you study anything other than those four  
 5 books in preparation for the exam?  
 6 A. No, I did not.  
 7 Q. Because you understood the questions were going  
 8 to come from those books?  
 9 A. Yes. That's what I understood.  
 10 Q. Y'all were told that in the orientation, were  
 11 you not?  
 12 A. I don't remember him saying it just like you  
 13 said it, but we just assumed that those books  
 14 were going to cover the test.  
 15 Q. So you reviewed those books, read some of them.  
 16 You studied at home. Anything else you did in  
 17 preparation for the test?  
 18 A. No. Other than all the years of going to the  
 19 fire college and going to the National Fire  
 20 Academy for advanced training. Other than  
 21 that ...  
 22 Q. Your experience?  
 23 A. Yes.

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1 Q. You said you went to the fire college and where  
 2 else?  
 3 A. I went -- Yeah, the fire college. I went to the  
 4 National Fire Academy at Emmitsburg, Maryland.  
 5 Q. How many times have you been to the fire  
 6 college?  
 7 A. Several. I've been up there about three or four  
 8 times, but a lot of classes now are taught in  
 9 the field so we don't really have to go up  
 10 there. But they are certified through the fire  
 11 college so we get a lot of that in regional  
 12 training.  
 13 Q. Do they give tests when you complete those  
 14 courses at the fire college?  
 15 A. Yes. After a week or two weeks of going over.  
 16 Q. You get a written test?  
 17 A. Yes.  
 18 Q. Does the written test have a passing score?  
 19 A. Yes.  
 20 Q. And what's the passing score on those written  
 21 tests?  
 22 A. It's a 70.  
 23 Q. And how about at the National Fire Academy in

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1 Maryland? Do they give written tests there?  
 2 A. No.  
 3 Q. Do they give you any kind of test?  
 4 A. You have homework, and they go over with you --  
 5 they are more of making sure you learn it than  
 6 test your abilities after you come -- the  
 7 classes I took. I don't know in the executive  
 8 fire officer classes what they do, but they give  
 9 you projects.  
 10 Q. So they don't test what they've taught you?  
 11 A. No. I haven't took one up there.  
 12 Q. Do you get any certification or anything from  
 13 them?  
 14 A. Yes.  
 15 Q. So then the test, I guess, is April 10 of 2006?  
 16 A. Somewhere thereabouts.  
 17 Q. Do you remember what time it started?  
 18 A. I couldn't say. I want to say about nine in the  
 19 morning.  
 20 Q. And who was there to sort of be the proctor to  
 21 oversee the test, give it out?  
 22 A. I want to say it was people from the human  
 23 resources department. I don't know if it was

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1 Mr. Reeves -- I can't recall -- or Stephanie  
 2 King. It was people from the human resource  
 3 department, though, that passed out ...  
 4 Q. Was there anybody there from CWH?  
 5 A. I can't recall.  
 6 Q. Do you remember how long you had to take the  
 7 test?  
 8 A. I believe it was three hours.  
 9 Q. And this --  
 10 A. I don't know for sure, but I believe it was  
 11 three hours.  
 12 Q. And this was strictly a written test?  
 13 A. Strictly a written test.  
 14 Q. And you knew at that time you had to have a  
 15 70 --  
 16 A. Yes.  
 17 Q. -- to go forward?  
 18 A. When we sat down there, we knew.  
 19 Q. Do you remember how long it took you to take the  
 20 test?  
 21 A. About two hours and thirty minutes, somewhere  
 22 thereabouts.  
 23 Q. Who was the first one finished?

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<p>1 A. I couldn't say.</p> <p>2 Q. Were you the second one to finish?</p> <p>3 A. No.</p> <p>4 Q. And when you completed the test that day with</p> <p>5 the human resources people there, did you make</p> <p>6 any complaints to anybody at that time about the</p> <p>7 written test?</p> <p>8 A. Not to anybody that was in authority. Some of</p> <p>9 the guys talked when we left about we thought it</p> <p>10 was vague.</p> <p>11 Q. But nobody -- you didn't complain to any of the</p> <p>12 people that you've sued --</p> <p>13 A. No.</p> <p>14 Q. -- in this lawsuit --</p> <p>15 A. No.</p> <p>16 Q. -- or anybody with human resources?</p> <p>17 A. No.</p> <p>18 Q. Did you ever complain to anybody that you've</p> <p>19 sued or with human resources before you learned</p> <p>20 you had not passed the test?</p> <p>21 A. No.</p> <p>22 Q. Did anybody that you talked to think they had</p> <p>23 done well?</p>	<p>1 chief did?</p> <p>2 A. Yes, I did.</p> <p>3 Q. And did you serve as an acting battalion chief</p> <p>4 before this test?</p> <p>5 A. Yes. When Chief Garrett was out, I would have</p> <p>6 to go to headquarters and run the shift.</p> <p>7 Q. Tell me what a battalion chief does</p> <p>8 A. This is layman's terms -- layman terms.</p> <p>9 Responsible for getting out all the</p> <p>10 communications that day, making sure the</p> <p>11 training gets done on shift, making sure that if</p> <p>12 any trucks are down and something that we can</p> <p>13 fix, that we get it took care of. They are in</p> <p>14 charge of responding to all fires and</p> <p>15 emergency-type situations and taking control of</p> <p>16 the scene and dispersing their manpower and</p> <p>17 other resources in the City we may need.</p> <p>18 They're just really the overseer. They take</p> <p>19 care of everything, you know.</p> <p>20 Q. Do they have supervisory responsibilities?</p> <p>21 A. Yes, they do. They are the top of the food</p> <p>22 chain besides the administrative part.</p> <p>23 Q. And you did not think that the questions on the</p>
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<p>1 A. Like I said, everybody thought it was kind of</p> <p>2 vague and not real poignant. If you answered</p> <p>3 something right, sometime you might not knew</p> <p>4 it. But it was different from the test that you</p> <p>5 take at the fire college. It was just</p> <p>6 different.</p> <p>7 Q. Well, how was it different?</p> <p>8 A. It was the same format, I mean, multiple choice,</p> <p>9 but it was just different.</p> <p>10 Q. Well, did you think the questions were related</p> <p>11 to what a battalion chief would do in the Auburn</p> <p>12 Fire Department?</p> <p>13 MR. HORSLEY: Object to the form.</p> <p>14 A. No.</p> <p>15 Q. Well, did you know what a battalion chief did in</p> <p>16 the Auburn Fire Department?</p> <p>17 A. Yes.</p> <p>18 Q. How did you know that?</p> <p>19 A. I do it.</p> <p>20 Q. You do the same thing as a battalion chief?</p> <p>21 A. Yes. I was acting battalion chief a couple of</p> <p>22 weeks ago for a week.</p> <p>23 Q. Before this test did you know what a battalion</p>	<p>1 test related to what a battalion chief did in</p> <p>2 Auburn, Alabama?</p> <p>3 A. It wasn't all of them. It was some of them.</p> <p>4 Q. Well, what percent of the test did you think did</p> <p>5 not relate to what you do in Auburn?</p> <p>6 MR. HORSLEY: Object to the form.</p> <p>7 A. Not expert, but about 35 to 40 percent.</p> <p>8 Q. The 35 or 40 percent that you did not think</p> <p>9 related to what a battalion chief did in the</p> <p>10 City of Auburn, did those questions relate to</p> <p>11 supervision of employees?</p> <p>12 MR. HORSLEY: Object to the form.</p> <p>13 A. I wouldn't say all of them.</p> <p>14 Q. But some percent of those would relate to</p> <p>15 supervision?</p> <p>16 A. Yeah. Yes.</p> <p>17 Q. Well, what kind of questions were there that you</p> <p>18 didn't think related to what a battalion chief</p> <p>19 did or to supervision? What were the other kind</p> <p>20 of questions on there that you didn't think</p> <p>21 related to one of those two subjects?</p> <p>22 MR. HORSLEY: Object to the form.</p> <p>23 A. Probably some of the structural firefighting</p>



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1 questions, because we have very little -- we're  
 2 not Boston or New York. We have very little --  
 3 We have a few high-rise. We don't have those  
 4 type high-rise. We don't have those type of  
 5 warehouses, stuff like that. It was some on  
 6 there -- I don't remember exactly what questions  
 7 it were, but it was a lot of them on there.  
 8 Q. There were questions on there about high-rises  
 9 and warehouses?  
 10 A. It was just how you attack those, as I  
 11 remember. How you structurally fight fire on  
 12 those. It would be -- In other words, it would  
 13 be larger scale operations than we would be used  
 14 to.  
 15 Q. And you knew from your conversation with Dean  
 16 Garrett, I guess, that the battalion chiefs had  
 17 looked at some of the questions or areas to be  
 18 questioned?  
 19 A. That's what he told me.  
 20 Q. Any other areas of the test that you didn't  
 21 think applied to Auburn or supervision other  
 22 than the ones that related to high-rises or  
 23 warehouses?

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1 MR. HORSLEY: Object to the form.  
 2 A. No.  
 3 Q. And what was the problem with the warehouses?  
 4 Don't they have warehouses in Auburn?  
 5 A. Yeah. But I'm saying -- you're talking about  
 6 warehouses that cover two or three city blocks.  
 7 It seemed to be questions on there about -- we  
 8 didn't -- Some of those questions seemed to me  
 9 to call for more apparatus than we were ever  
 10 going to have or more manpower.  
 11 Q. Any other complaints you had about the written  
 12 test that day?  
 13 A. That day?  
 14 Q. I mean --  
 15 A. I just didn't think it was fair.  
 16 Q. But you didn't express that to anybody other --  
 17 A. Of authority. Nobody of authority.  
 18 Q. And all the people that talked about it said  
 19 they thought it was vague?  
 20 A. Yes.  
 21 Q. What did you mean by vague?  
 22 A. Just, you know -- It just didn't kind of fit  
 23 Auburn. It just didn't fit what we was used to

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1 doing.  
 2 Q. Who all thought it was vague?  
 3 A. The same older officers I talked to.  
 4 Q. The older officers?  
 5 A. Yeah. Lieutenant Clanton, Lieutenant Hodge, we  
 6 spoke about it.  
 7 Q. Clanton, Hodge, and you. Y'all thought it was  
 8 vague?  
 9 A. Yes.  
 10 Q. Did you challenge any of the test questions?  
 11 A. I think Joey did. Chief Darby did that. I  
 12 think he was the one that -- I know some  
 13 questions were being challenged, and later on I  
 14 come to find out I believe he was the one doing  
 15 it.  
 16 Q. Did you challenge any questions?  
 17 A. No, I did not.  
 18 Q. Before filing the grievance, did you ever  
 19 complain to anybody that you've sued in this  
 20 lawsuit --  
 21 A. Yes.  
 22 Q. -- about the written test --  
 23 A. Yes.

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1 Q. -- being unfair?  
 2 A. Yes.  
 3 Q. And to whom did you complain?  
 4 A. The day I was talking to Chief Langley and Chief  
 5 Lamar walked in, and I told him to come on in  
 6 too. I don't know if he was paying me much  
 7 attention, but I was complaining to chief that  
 8 day.  
 9 Q. What day?  
 10 A. It was after we took the test. It was about a  
 11 couple of days after we took the test. And  
 12 I just told them I didn't think the process was  
 13 fair.  
 14 Q. Well, did you tell them what was unfair about  
 15 the process?  
 16 A. Yes. People that got promoted to battalion  
 17 chief before me and didn't take a test.  
 18 Q. Well, did you ever tell anybody you thought it  
 19 discriminated against you because you were  
 20 black?  
 21 A. Yes, I did. All the black guys, we didn't have  
 22 a chance to be promoted. Obviously it  
 23 discriminated against us because we was black.

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1 Q. Did you explain --  
 2 A. Every time it comes time for -- at that  
 3 department for a black guy to move up on  
 4 experience and seniority, the rules change. You  
 5 can go back to when Lieutenant Felton and  
 6 Lieutenant Strickland had to file that lawsuit.  
 7 It was about the same thing: Being promoted  
 8 from lieutenant up to a higher rank.  
 9 Q. When is the first time that you complained to  
 10 any of the people that you've sued in this  
 11 lawsuit that you thought that test discriminated  
 12 against you because you were black?  
 13 A. I said it was unfair at the time.  
 14 Q. I know you said unfair. I mean specifically  
 15 complained that this test discriminates against  
 16 me because I'm black. When is the first time  
 17 you told anybody you sued that?  
 18 MR. HORSLEY: Your question was this  
 19 test discriminates against me, not  
 20 the whole promotional process?  
 21 MR. MORGAN: Anything. I don't care  
 22 what you call it.  
 23 MR. HORSLEY: Don't answer --

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1 MR. MORGAN: Well, I want to make  
 2 sure --  
 3 MR. HORSLEY: I don't want him to  
 4 answer anything.  
 5 Q. Anytime you complained about the test, the  
 6 procedure, or anything discriminating against  
 7 you because you were black.  
 8 A. We was talking about the process, and we talked  
 9 amongst ourselves before we filed the grievance  
 10 that -- Me and Lieutenant Stephens talked among  
 11 ourselves about the situation and from our  
 12 perspective. There were three blacks down  
 13 there. Every time -- I'm looking at four white  
 14 guys that just got promoted to battalion chief  
 15 and retired. Me and him looking at one another  
 16 like, now, you're a senior man; I'm a senior  
 17 man; the only thing we got in common is that and  
 18 we're black so it look like we just don't get a  
 19 shake; they are doing this on purpose.  
 20 Q. And did Horace Clanton and Robbie Hodge think  
 21 they were being discriminated against?  
 22 MR. HORSLEY: Object to the form.  
 23 A. I have no idea. I didn't talk to them about --

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1 They was worried more about the time in grade  
 2 policy and the inconsistencies.  
 3 Q. Weren't they senior men?  
 4 A. Yeah. They were more concerned about the  
 5 inconsistencies that we stated in the letter,  
 6 that some people can take a test to move up and  
 7 some people get gave their jobs, and some people  
 8 just walk up there one day and come back and  
 9 they are your boss.  
 10 Q. Well, did they think that they were -- that test  
 11 was unfair?  
 12 MR. HORSLEY: Object to the form.  
 13 A. I have no idea. You'll have to ask them that.  
 14 Q. Well, you did ask them, didn't you? Didn't  
 15 y'all meet and sign the letter together and go  
 16 through the procedure?  
 17 A. They didn't like the process no more than we did.  
 18 Q. Well, of the people that you've sued in this  
 19 lawsuit -- While I'm thinking about it, what's  
 20 the basis of Cortez Lawrence being sued? Did he  
 21 have anything to do with this battalion chief  
 22 promotion?  
 23 A. He didn't have anything to do with the battalion

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1 chief promotion.  
 2 Q. He wasn't there? Been gone for years, hadn't  
 3 he?  
 4 A. The only thing he got to do with this is they  
 5 are still using his policies and procedures,  
 6 which definitely discriminates against  
 7 African-Americans being hired at that fire  
 8 department.  
 9 Q. What policy and procedures --  
 10 A. Student firefighter program.  
 11 Q. You think -- The student firefighter program,  
 12 that's Cortez Lawrence's policy and procedure --  
 13 A. It's his program.  
 14 Q. -- program?  
 15 And you say it discriminates against blacks  
 16 being hired?  
 17 A. Yes.  
 18 Q. And that procedure has been in effect how long?  
 19 A. For about 13, 14 years.  
 20 Q. And you know Gerald Stephens went through that  
 21 procedure?  
 22 A. Yes. It's a couple of blacks have been -- two,  
 23 three, four. But if you look at the ratio and

<p style="text-align: right;">Page 101</p> <p>1 the numbers, it has a definite effect.</p> <p>2 Q. Well, is it not true that you never challenged</p> <p>3 that procedure when it was first implemented?</p> <p>4 A. They had it in the lawsuit -- the old lawsuit.</p> <p>5 It's in the old lawsuit.</p> <p>6 Q. Did you ever --</p> <p>7 A. I didn't challenge it.</p> <p>8 Q. Did you challenge it in the 1990s at all? Did</p> <p>9 you ever make a complaint or file a lawsuit</p> <p>10 about the --</p> <p>11 A. No, I did not.</p> <p>12 Q. So the only thing with Cortez Lawrence is that</p> <p>13 the City is still using his procedures or</p> <p>14 policies on the student firefighter program?</p> <p>15 A. Yes.</p> <p>16 Q. And that's in hiring?</p> <p>17 A. Yes.</p> <p>18 Q. And he's been gone for at least, what, seven or</p> <p>19 eight years?</p> <p>20 A. Yes.</p> <p>21 Q. He had nothing to do with the battalion chief?</p> <p>22 A. No, he did not. Not to my knowledge.</p> <p>23 Q. So going back to my question: When is the first</p>	<p style="text-align: right;">Page 103</p> <p>1 date.</p> <p>2 (Defendant's Exhibit 15 marked for</p> <p>3 identification.)</p> <p>4 Q. But did you receive that from --</p> <p>5 A. Yes, I did.</p> <p>6 Q. -- from somebody?</p> <p>7 A. I received one, but it wasn't April 4. I don't</p> <p>8 know --</p> <p>9 Q. Yeah. It's a different date.</p> <p>10 A. It's a different date.</p> <p>11 Q. In fact, you probably received this one first.</p> <p>12 Defendant's Exhibit 16, do you remember</p> <p>13 receiving that, which is the -- telling you</p> <p>14 about that you hadn't scored --</p> <p>15 A. Yes.</p> <p>16 Q. -- 70?</p> <p>17 (Defendant's Exhibit 16 marked for</p> <p>18 identification.)</p> <p>19 Q. And then you received 15 probably after this but</p> <p>20 at some point, which is a candidate feedback</p> <p>21 report regarding the written test. And it says</p> <p>22 if you have any questions, please contact me</p> <p>23 directly.</p>
<p style="text-align: right;">Page 102</p> <p>1 time that you complained to somebody that you've</p> <p>2 sued that you thought that this test or</p> <p>3 procedure, the process, discriminated against</p> <p>4 you on the basis of your race?</p> <p>5 A. I know we filed -- We didn't put -- state that</p> <p>6 particularly in the first couple of letters, but</p> <p>7 it was stated about blacks being promoted and</p> <p>8 hired in the last letter that we sent out, I</p> <p>9 think. It should be in one of your --</p> <p>10 Q. The last letters --</p> <p>11 A. It's one of the letters in the grievance process</p> <p>12 we sent back and forth, back and forth. And it</p> <p>13 was stated in the letter that if they would</p> <p>14 carefully check in their records, no</p> <p>15 African-American firefighter has been promoted</p> <p>16 or hired in the past twelve years.</p> <p>17 Q. That's in one of the letters in the grievance</p> <p>18 process?</p> <p>19 A. Yes, it is. So it went to everybody. It went</p> <p>20 to the people that was our immediate</p> <p>21 supervisors.</p> <p>22 Q. Let me show you what I marked as Defendant's</p> <p>23 Exhibit 15, which is obviously an incorrect</p>	<p style="text-align: right;">Page 104</p> <p>1 Did you contact Steve Reeves after you</p> <p>2 received the candidate feedback report?</p> <p>3 A. If my memory serve me correct, we briefly went</p> <p>4 over this with -- I'm trying -- I don't know if</p> <p>5 it was Mr. Reeves -- and tried to explain some</p> <p>6 of this to us. But everybody left there was</p> <p>7 like still -- we went in and didn't know</p> <p>8 nothing, and we left and didn't know nothing.</p> <p>9 Q. Let's talk about that meeting. Who was that --</p> <p>10 A. I know they tried to explain -- somebody tried</p> <p>11 to explain this to us because -- when they were</p> <p>12 sent back after the challenge. I can't say it</p> <p>13 was Mr. Reeves. It might have been, since</p> <p>14 that's part of his duties in his capacity of</p> <p>15 HR. But somebody did go over this with us.</p> <p>16 Q. Went over your candidate feedback?</p> <p>17 A. Yes.</p> <p>18 Q. Did they go over it just with you --</p> <p>19 A. No.</p> <p>20 Q. -- or with everybody?</p> <p>21 A. Yes.</p> <p>22 Q. Blacks and whites?</p> <p>23 A. Yes.</p>

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<p>1 Q. And where was that meeting held?</p> <p>2 A. It had to be at the fire department.</p> <p>3 Q. And do you remember what was said at the</p> <p>4 meeting?</p> <p>5 A. It was just explaining the breakdown, I guess,</p> <p>6 of these. I don't remember specifically what</p> <p>7 was said. Just the scoring breakdown.</p> <p>8 Q. Did you make any specific complaints at that</p> <p>9 time about the written test?</p> <p>10 A. No, I did not.</p> <p>11 Q. And when did you learn that Joey Darby had</p> <p>12 challenged some of the questions?</p> <p>13 A. Some people were complaining. I can't call</p> <p>14 their names. I just remember they were</p> <p>15 complaining, and somebody said Joey had</p> <p>16 challenged. And then we had a waiting period</p> <p>17 till CWH figured out which ones they were going</p> <p>18 to throw out. And they came back and said they</p> <p>19 threw out, I believe they said, seven.</p> <p>20 Q. CWH threw out seven questions?</p> <p>21 A. Yes. We don't know if we got those seven right</p> <p>22 or -- They were not going to count seven of</p> <p>23 them. And by virtue of those seven being</p>	<p>1 Q. You don't know one way or the other?</p> <p>2 A. I don't know one way or the other.</p> <p>3 Q. How did y'all find out that it had increased</p> <p>4 Joey's score?</p> <p>5 A. We know he hadn't passed.</p> <p>6 Q. Did he get one of these candidate feedback</p> <p>7 letters that said he didn't pass?</p> <p>8 A. I hadn't talked to him, but everybody knew he</p> <p>9 didn't pass so obviously he got a candidate</p> <p>10 feedback letter.</p> <p>11 Q. And you knew he hadn't passed because everybody</p> <p>12 knew?</p> <p>13 A. Yeah. It wasn't just I knowed it. People knew</p> <p>14 it.</p> <p>15 Q. Did he ever say, hey, I didn't pass and I'm</p> <p>16 challenging this question?</p> <p>17 A. No. He was challenging the questions.</p> <p>18 Q. And CWH looked at the test questions and --</p> <p>19 A. And deemed them, I guess, unfit to be in there,</p> <p>20 and they threw seven of them out.</p> <p>21 Q. How many questions were there all together?</p> <p>22 A. One hundred.</p> <p>23 Q. The meeting with Steve or somebody from HR to go</p>
Page 106	Page 108
<p>1 threw out, that put Joey had an even 70.</p> <p>2 Q. Put him at an even 70?</p> <p>3 A. Yes.</p> <p>4 Q. What had been his score before?</p> <p>5 A. I have no idea. I know he didn't pass, but</p> <p>6 that -- when they threw the questions out, that</p> <p>7 put him at a even 70.</p> <p>8 Q. Who threw the questions out?</p> <p>9 A. Somebody from CWH.</p> <p>10 Q. Well, you're not saying CWH threw those</p> <p>11 questions out --</p> <p>12 A. No, I haven't --</p> <p>13 Q. Let me finish my question.</p> <p>14 You're not saying CWH threw those questions</p> <p>15 out so that a white male could reach a passing</p> <p>16 score, are you?</p> <p>17 A. I have no idea what CWH did. I just know they</p> <p>18 threw out seven questions that had been</p> <p>19 complained about.</p> <p>20 Q. And did it increase your score as well?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Did it decrease your score?</p> <p>23 A. Not to my knowledge.</p>	<p>1 over the candidate feedback, was that somebody</p> <p>2 from the City or was that somebody from WCH</p> <p>3 there?</p> <p>4 A. I believe it was the City official.</p> <p>5 Q. Did you file your grievance before or after</p> <p>6 that?</p> <p>7 A. I can't recall. It might have been filed</p> <p>8 before, but I can't say.</p> <p>9 Q. Let me show you Defendant's Exhibit 17.</p> <p>10 (Defendant's Exhibit 17 marked for</p> <p>11 identification.)</p> <p>12 Q. Is that the grievance that you filed?</p> <p>13 A. Yes.</p> <p>14 Q. When were you supposed to challenge the</p> <p>15 questions?</p> <p>16 A. I think you had maybe -- After the test, I</p> <p>17 believe. I can't say exactly the time frame.</p> <p>18 Q. How did you learn you could challenge questions?</p> <p>19 A. I think that was went over in orientation. It</p> <p>20 might have been went over in orientation.</p> <p>21 Q. And your recollection is you had some time</p> <p>22 period after the test to challenge questions?</p> <p>23 A. Maybe a couple of days.</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. But a day or two or some period?</p> <p>2 A. Yes. That's my recollection, now. Somebody</p> <p>3 else might remember something different.</p> <p>4 Q. And that was something discussed, I guess, by</p> <p>5 the CWH person in orientation?</p> <p>6 A. Yeah.</p> <p>7 Q. And is it your understanding that Joey Darby is</p> <p>8 the only one that challenged any questions?</p> <p>9 A. Yes, that's my understanding. I don't know if</p> <p>10 anybody else did or didn't, but it's my</p> <p>11 understanding that he --</p> <p>12 Q. We know you did not.</p> <p>13 A. No, I did not.</p> <p>14 Q. And these older firefighters that were making</p> <p>15 complaints about the test being vague, they</p> <p>16 didn't challenge any questions?</p> <p>17 A. No, they did not. Not to my knowledge they</p> <p>18 didn't.</p> <p>19 Q. We can agree, I guess, that Defendant's Exhibit</p> <p>20 17 does not make any reference to your race as a</p> <p>21 factor, does it?</p> <p>22 A. No, it doesn't. Not the first letter.</p> <p>23 Q. But you say there's another letter in the</p>	<p style="text-align: right;">Page 111</p> <p>1 No time in grade policy was a concern of</p> <p>2 mine also because I had come there -- when they</p> <p>3 hired me, you had to learn one job before you</p> <p>4 came in and -- because you might have been a</p> <p>5 little better in a book here and or book there,</p> <p>6 you could just come in from being -- Some people</p> <p>7 hadn't even been off probation got promoted, and</p> <p>8 you have to show them how to get around the</p> <p>9 street there. But they are sitting in the</p> <p>10 officer's seat. They are lieutenants. So I had</p> <p>11 a concern about that.</p> <p>12 No accumulative point system, that goes back</p> <p>13 to the written exam. You're grading a man on</p> <p>14 one thing and one thing only. You get that</p> <p>15 cutoff score. You don't -- And then you turn</p> <p>16 around and he does the job, and nobody holler,</p> <p>17 well, you didn't make 70; get out the Jeep.</p> <p>18 Inconsistency on past promotional process,</p> <p>19 if you think about everything I just said, that</p> <p>20 sums that up because everybody that been</p> <p>21 promoted down there has been promoted in a</p> <p>22 different way in the last twelve years.</p> <p>23 Q. So I want to be clear on the written exam. Did</p>
<p style="text-align: right;">Page 110</p> <p>1 grievance process that does make reference to --</p> <p>2 A. Yes. It was on down the chain. It was probably</p> <p>3 the fourth or fifth letter.</p> <p>4 Q. Now, there are four specific complaints about</p> <p>5 the test --</p> <p>6 A. Yes.</p> <p>7 Q. -- on this Defendant's Exhibit Number 17. I'm</p> <p>8 going to ask you which ones -- Look at the four</p> <p>9 of them. Were all four of those complaints that</p> <p>10 you had or which ones were your complaints?</p> <p>11 MR. HORSLEY: Just for clarity, these</p> <p>12 are not all four complaints about</p> <p>13 the test. These are complaints</p> <p>14 about the whole procedure.</p> <p>15 A. Yes. That's what I was going to say. This is</p> <p>16 more in line with the policies and procedures of</p> <p>17 the Auburn Fire Department. That written</p> <p>18 exam -- When we say written exam, my thinking</p> <p>19 was, why we have to take a written examine with</p> <p>20 a cutoff score. That was my concern when we met</p> <p>21 to write this letter: Why take a written exam</p> <p>22 when people getting promoted and tested in other</p> <p>23 ways down here and get promoted.</p>	<p style="text-align: right;">Page 112</p> <p>1 you have a complaint about the written exam or</p> <p>2 just the fact that --</p> <p>3 A. The way it was administered.</p> <p>4 Q. What was it about the way it was administered?</p> <p>5 A. 70 cutoff score.</p> <p>6 Q. You didn't think there should be a cutoff score?</p> <p>7 A. No.</p> <p>8 Q. If there hadn't been a cutoff score, would it</p> <p>9 have been okay with you to use a written exam?</p> <p>10 A. Yes. If it hadn't been a cutoff score. I think</p> <p>11 you should be tested on certain things, and then</p> <p>12 if you're not that good at maybe a written exam,</p> <p>13 you can go in and show, okay, I know this</p> <p>14 hands-on. You give me a hands-on exercise or</p> <p>15 you give me a in-basket; you give me something</p> <p>16 that I actually do when I'm out there doing it,</p> <p>17 and you can see how well I do it.</p> <p>18 Q. So if there hadn't been a 70 cutoff score on</p> <p>19 this exam, the use of this exam would have been</p> <p>20 okay with you?</p> <p>21 A. As long as I got a chance to go forward in the</p> <p>22 process.</p> <p>23 Q. Does that mean yes?</p>



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<p>1 A. Yes.</p> <p>2 Q. And the no time in grade is that you didn't have</p> <p>3 to be a --</p> <p>4 A. You could skip rank now. You could jump -- go</p> <p>5 from firefighter to being the chief, and then</p> <p>6 you get up there with that power and say I got</p> <p>7 to take a test when I just watched you go from</p> <p>8 firefighter to chief.</p> <p>9 Q. And is it --</p> <p>10 A. That goes down to inconsistency too.</p> <p>11 Q. Is it your testimony this is the first test</p> <p>12 where there was no time in grade requirement?</p> <p>13 MR. HORSLEY: Test?</p> <p>14 Q. First procedure.</p> <p>15 A. For captain or battalion chief, yes.</p> <p>16 Q. So for captain or battalion chief, this is the</p> <p>17 first promotion process where you didn't have a</p> <p>18 time in grade requirement?</p> <p>19 A. Yes. With eight years of service, you wouldn't</p> <p>20 have even been considered.</p> <p>21 Q. With how many?</p> <p>22 A. Eight years of service, you wouldn't even be</p> <p>23 considered fifteen years ago.</p>	<p>1 getting wrote up, coming to work on time,</p> <p>2 wearing your uniform with pride. We do</p> <p>3 merit-based raises. We get merit-based raises.</p> <p>4 And if I'm supervising a career firefighter and</p> <p>5 I don't fill his evaluation out just like my</p> <p>6 chief want me to -- It's very important that we</p> <p>7 do that and keep a track of his performance.</p> <p>8 Now, you got -- you ought to be able -- if</p> <p>9 that's so important, you ought to be able to</p> <p>10 incorporate that into your promotional</p> <p>11 procedures also.</p> <p>12 Q. You're saying the promotional procedures should</p> <p>13 have included more than the test --</p> <p>14 A. Exactly.</p> <p>15 Q. -- and the assessment center?</p> <p>16 A. Exactly.</p> <p>17 Q. What else should have been -- Let me finish.</p> <p>18 What else should have been involved in the</p> <p>19 promotional procedure besides the written test</p> <p>20 and the assessment center?</p> <p>21 MR. HORSLEY: Object to the form.</p> <p>22 A. Your yearly appraisals, the years that you've</p> <p>23 been there. That's about it.</p>
Page 114	Page 116
<p>1 Q. How many years of service do you think you</p> <p>2 should have had before you could be considered?</p> <p>3 MR. HORSLEY: Object to the form.</p> <p>4 A. At least ten to fifteen.</p> <p>5 Q. And then no accumulative point system, I'm not</p> <p>6 clear on that one. Tell me what that one is.</p> <p>7 A. Say somebody took the test and made a 69 on it,</p> <p>8 and they move to the next phase of testing, of</p> <p>9 an in-basket or they done a great job on</p> <p>10 doing -- say it was something that Chief Lamar</p> <p>11 wants us to do, an assignment, and we did that</p> <p>12 so we made -- Say he made a 75 on that where</p> <p>13 somebody on the test might have made a 71 and</p> <p>14 then didn't do so good on that. You took all</p> <p>15 those scores when you got to the end of the</p> <p>16 thing and add it up and come out with a average</p> <p>17 and then made your promotions.</p> <p>18 Q. That's basically the same thing about the</p> <p>19 written test, not having a cutoff score, isn't</p> <p>20 it?</p> <p>21 A. Basically.</p> <p>22 Q. You think you should have --</p> <p>23 A. You accumulate points. You get points for not</p>	<p>1 Q. So you should have a written test, you should</p> <p>2 have the assessment center, but then you should</p> <p>3 also --</p> <p>4 A. But some of this stuff should come before</p> <p>5 there. Like I said, your appraisals, if they</p> <p>6 are so important, the way we have to fill them</p> <p>7 out, they should be looked at before you be</p> <p>8 allowed to put in for a promotion.</p> <p>9 Q. So what you would do to eliminate people rather</p> <p>10 than a written test is looking at the yearly</p> <p>11 appraisals?</p> <p>12 A. Yeah. Because if he's not coming to work</p> <p>13 wearing his uniform right, if I had to reprimand</p> <p>14 him for being late and then all the sudden he's</p> <p>15 eligible for battalion chief, obviously he got a</p> <p>16 problem with coming to work on time, but yet and</p> <p>17 still he's going to be battalion chief because</p> <p>18 he can pass a test?</p> <p>19 Q. Are those written appraisals --</p> <p>20 A. Performance appraisals.</p> <p>21 Q. Is that where your supervising officer goes</p> <p>22 through and fills out things and says this is</p> <p>23 what Eddie -- he's a 3 on this or a 4 on that or</p>

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1 a 5 on that?

2 A. Yeah. But you also -- that's how they move you

3 from -- get your raises. You also get your

4 raises based on that. You have to meet a

5 certain standard.

6 Q. And you think that that should be used to

7 determine who is eligible for promotions?

8 A. I didn't say the determining factor, but used.

9 That should have a little weight.

10 Q. Should it eliminate people? because you said

11 you ought to look at that first.

12 MR. HORSLEY: Object to the form.

13 A. I don't believe it should totally -- I don't

14 believe in elimination. If you're -- Me, let me

15 speak for me personally. To be discriminated

16 against -- I don't like that word "elimination"

17 because people can find ways to keep you out of

18 stuff. There's smart people in this world.

19 They can find ways and don't make it look like

20 it, but you can discriminate against. I'm

21 speaking for my side. I've done experienced

22 it. And so I don't believe in that word

23 "elimination". But you should take all of it

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1 into consideration. Let's look at it that way.

2 Q. Here's the reason I asked that. Earlier you

3 said that you should look at the performance

4 appraisal to determine who should be able to

5 take --

6 A. I made a mistake.

7 Q. Are you backing off that?

8 A. I'm backing off that. But have all of it add up

9 to something and don't cut nobody. Just don't

10 cut nothing. Just get a score. That way you

11 could do it this way. If that person didn't

12 wear his uniform, he could see why maybe he

13 didn't get -- he could go through the process,

14 but he could see where he fell 5 points short

15 for not wearing his uniform. He'll be more

16 motivated to the next time to keep his shirttail

17 tucked in, wear his collar brass the right way,

18 make sure the truck gets checked off, because,

19 let's face it. We live in a world where you can

20 only do so much talking to people when you're a

21 supervisor.

22 Q. Would you count that equal with the written test

23 of the assessment center, the performance

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1 appraisal?

2 MR. HORSLEY: Object to the form.

3 A. I can't make a statement because I'm not a

4 expert. I just thought it should be included in

5 my opinion.

6 Q. You think the seniority --

7 A. Yes, I think it should be included. I ain't say

8 give them a hundred points. I say give them

9 some points. A lot of departments do, for being

10 on the job, for being there and being -- You can

11 look at the appraisal and look at how long

12 they've been on the job and say, well, if this

13 person is doing this at this level, then you can

14 score -- give them a numerical score on it.

15 Q. So a person who may have better performance

16 appraisals and score higher on a written test

17 and do better on an assessment center should be

18 penalized because they haven't been hired before

19 somebody else?

20 MR. HORSLEY: Object to the form.

21 That's not what he said.

22 A. No, that's not what I'm saying.

23 Q. Tell me what you're saying. I want to be sure I

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1 understand.

2 MR. HORSLEY: Object to the form.

3 He's answered the question, but go

4 ahead and answer it again.

5 Q. I want to be sure I understand. I didn't

6 understand. Exactly what is it about the

7 seniority? What --

8 A. We have always got points when I was hired for

9 seniority.

10 Q. And seniority means from your hiring date

11 forward?

12 A. That's right. From your hiring date forward.

13 You can be there -- But, see, when you came in

14 the door -- you don't even come in the door

15 pushing to be at the front of the line. Now we

16 got a culture of where, I don't have to know

17 this. You got people -- If I was driving a

18 truck for one of those guys right now, I would

19 have to show them how to get around town.

20 Q. Who is one of those guys?

21 A. Some of the battalion chiefs.

22 Q. I'm going to get to that in just a minute.

23 You should get points under a procedure you

Page 121	Page 123
<p>1 would have for being hired longer than somebody 2 else? 3 A. I think so. 4 Q. Who among these battalion chiefs had poorer 5 yearly appraisals than you did? 6 A. I have no way of knowing that. That's personal 7 information. I'm not -- When I say that, I'm 8 not accusing them of anything. I'm saying I 9 think that's the way the promotional process 10 should have been. 11 Q. Do you know whether or not any of the people 12 that were promoted had bad performance 13 appraisals? 14 A. I know because of seniority and no time in grade 15 policy and inconsistent past promotional 16 procedures that that benefited those guys. 17 Q. My question, though, is: On the performance 18 appraisals that you think -- 19 A. No, I don't. 20 Q. -- that you think should be a part of it, do you 21 know whether or not -- 22 A. I would have no way of knowing. 23 Q. How are your performance appraisals?</p>	<p>1 testifying to? 2 A. They don't know them like the people -- their 3 predecessors had to know them. I'll put it that 4 way. 5 Q. And specifically which -- All battalion chiefs? 6 A. Yes. 7 Q. None of the battalion chiefs know their streets 8 and numbers? 9 MR. HORSLEY: Object to the form. 10 That's not what he said. 11 Q. Like you would have? 12 A. Like their predecessors were required to. 13 Q. How did they test the predecessors to see if 14 they knew them? 15 A. Now we have people moving so fast that you 16 didn't get -- We moved fast because that's the 17 way they done got the system set up. But you 18 used to you come in -- You're 19 fresh coming in 19 now from college, 19, student firefighter, and 20 driving the front end pumper, that's a lot of 21 responsibility. Driving a truck in to lay a 22 line to a house fire and you're 19 years old 23 with a \$300,000 piece of apparatus at your</p>
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<p>1 A. Every one I seen is good. 2 Q. And what battalion chiefs are there there don't 3 know how to get around the city? 4 A. I'm saying that's not a big priority now, and a 5 lot of people come up through the ranks and 6 really don't know their streets and numbers. 7 When I came I had to learn that and go before 8 people and show them that I knew that in order 9 to move to the next step. 10 Q. Well, what battalion chiefs don't know their 11 streets and numbers? 12 A. Most of them. I would say every one of them. 13 They are learning them. They are getting 14 on-the-job training, but that wasn't required of 15 them when they first came in like it was 16 required of me. 17 Q. You mean when they were first hired? 18 A. I know it wasn't. They didn't enforce it like 19 they did against me. They would have put it in 20 my appraisal and fired me. 21 Q. Well, is it your testimony that the people that 22 were promoted to battalion chief don't know 23 their streets and numbers? Is that what you're</p>	<p>1 control, that's unheard of in most places. 2 Q. Are you saying those people aren't competent to 3 do it? 4 A. That's a lot of responsibility. You need time 5 to learn. 6 Q. Didn't y'all's fire rating just increase? 7 A. I have no way of knowing. That's Chief Lamar. 8 Q. And I'm not trying to argue with you. I want to 9 be sure I understand what you're saying. 10 A student firefighter in your opinion is not 11 qualified to operate a piece of apparatus? Is 12 that what you're saying? 13 MR. HORSLEY: That's not what he 14 said. 15 A. I'm not a expert. Let me sum it up this way. 16 The standards I were hired under are lacking 17 now. That's what I am saying. 18 Q. And how are they lacking? 19 MR. HORSLEY: Object to the form. 20 Asked and answered. 21 A. That's all I can say. Standards -- 22 Q. Well, you've told me about the streets and 23 numbers. How else are they lacking?</p>



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1 A. I could sit here all day and go through things  
2 that are different now about what happens down  
3 there. The training, it's good, but people are  
4 not -- you've got people that are just sliding  
5 through the cracks. They are looking forward to  
6 being promoted instead of learning one job  
7 before they can get -- before they can move to  
8 the next because they done took away all the  
9 standards, all the policies.

10 When I came in -- And this is exactly what  
11 I'm saying. When I came in, I was told learn  
12 your streets and numbers, your hydrant  
13 locations, and you've got a certain time to  
14 learn them and the hydrant locations, and then  
15 we're going to teach you how to tilt the back of  
16 the ladder truck and we're going to teach you  
17 how to drive a pumper, and you won't be eligible  
18 for a promotion to lieutenant for at least five  
19 years.

20 Now they come in, and they entertain the  
21 thought of a promotion as soon as they come off  
22 probation, or some will sneak in on probation.  
23 They let them come in on probation to sit in to

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1 get promoted. That's what I'm saying right  
2 there in a nutshell.

3 Q. Is it your opinion that the procedures and  
4 promotion policies and hiring policies under  
5 Ellis Mitchell are better and more fair than  
6 they are today?

7 MR. HORSLEY: Object to the form.

8 A. In my opinion -- Like I say, I'm not a expert.  
9 I know he had his problems, but -- Yes, he had  
10 some problems, some serious problems, because he  
11 told me what he told me when he hired me. But  
12 at least when he hired me and told me that, I  
13 could accept the fact he was trying to do  
14 something about it.

15 Q. So you think his hiring and promotion procedures  
16 are better than what they are now?

17 MR. HORSLEY: Object to the form.

18 A. I think he required more of you.

19 Q. He required more of you?

20 A. Yeah. Than just --

21 Q. Who was promoted from probationary status?

22 A. Rodney Hartsfield.

23 Q. He was --

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1 A. Team leader. He promoted from firefighter to  
2 team leader.

3 Q. And he was still --

4 A. On probation per City policy.

5 Q. Where is that City policy that says you have to  
6 have one year in grade?

7 A. Firemen and policeman -- It's in the City  
8 personnel policies book.

9 Q. Do you have that City personnel book that has  
10 that in there?

11 A. I don't have it handy.

12 Q. But there's a City policy in the personnel book  
13 that says police and fire have to be in a  
14 position one year before they can --

15 A. Yes. I just read it last week. I went online  
16 and read it last week.

17 Q. I think the last thing on -- what's that letter  
18 number -- Defendant's Exhibit 17, inconsistency  
19 of past promotional procedures, what's your  
20 complaint? Was that one of your complaints?

21 A. Yes.

22 Q. What was your complaint?

23 A. Just what I got through spelling out. If Chief

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1 Lamar can get promoted one way, Chief Lankford  
2 can get promoted another way, Fire Chief Langley  
3 got promoted from firefighter to captain by  
4 somebody coming and getting him and telling him  
5 he captain and then he moves to the chief  
6 position and never took a written test, it's  
7 definitely discriminatory when you require that  
8 of me.

9 Q. Well, it would be -- would it be discriminatory  
10 if you required it of anybody, black or white?

11 MR. HORSLEY: Object to the form.

12 A. I've got to worry about me right now.

13 Q. I'm asking you. Is it any less discriminatory  
14 toward you as a black than it would be as a  
15 white?

16 MR. HORSLEY: Object to the form.

17 A. Well, it's excluding us blacks. I'll put it --

18 Q. Well, does it exclude the other whites?

19 A. Other whites are being promoted at a record  
20 rate.

21 Q. Mr. Ogletree, does it exclude people who don't  
22 get promoted like Horace Clanton? Is he  
23 discriminated against?

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1 MR. HORSLEY: Object to the form.  
 2 A. I have no idea.  
 3 Q. You don't know if he's discriminated against?  
 4 A. I have no idea. That would be something he  
 5 would have to tell you. I know how I feel.  
 6 Q. So the procedure only discriminates against  
 7 blacks, not against whites that don't get  
 8 promoted. That's your testimony?  
 9 MR. HORSLEY: Object to the form.  
 10 A. That's my testimony.  
 11 Q. You asked that the four written exams be  
 12 reviewed. Information was received that  
 13 questions were excluded. Is that the challenges  
 14 that were made by Joey Darby?  
 15 A. Yes. I guess that's what that were referring  
 16 to.  
 17 Q. And very concerned which questions were removed  
 18 and verify that everyone participated in the  
 19 exam was equally graded.  
 20 Do you have any --  
 21 A. I have no way of knowing.  
 22 Q. -- evidence or testimony or hearsay or opinions  
 23 now that anybody was not graded fairly?

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1 A. I have no way of knowing that. We don't even  
 2 know what questions were threw out. We have no  
 3 way -- We know it helped Joey, but we don't know  
 4 did somebody get all seven right and they still  
 5 were thrown out and they didn't get credit for  
 6 it. We have no way of knowing.  
 7 Q. You don't know whether it helped you or not?  
 8 A. That's right  
 9 MR. HANCOCK: Are we close to a  
 10 break?  
 11 MR. MORGAN: Sure.  
 12 (Brief recess.)  
 13 Q. (Continuing by Mr. Morgan) Mr. Ogletree, do you  
 14 recall sometime in the late 1980s that there was  
 15 a lawsuit against the City dealing with the  
 16 Auburn Fire Department and Ellis Mitchell as its  
 17 fire chief?  
 18 A. Yes.  
 19 Q. After that lawsuit was settled, did the City  
 20 ever give any streets and numbers exam?  
 21 A. They didn't never really give an exam. They  
 22 just called you in and sat you down, and you  
 23 would answer to your supervisor really. It

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1 wasn't nothing that was like what they are  
 2 giving you today and say you've got a 70. They  
 3 just made sure you knew it. I didn't take it as  
 4 being an exam. They just kind of called you in  
 5 and gave you a map and said fill it in. Or you  
 6 sat there before somebody, and they would ask  
 7 you Cox Street, and then you would have to give  
 8 all streets and the numbers on them.  
 9 Q. Since the settlement of that lawsuit against the  
 10 City and Ellis Mitchell, have applicants for  
 11 promotion ever been given any points for  
 12 seniority?  
 13 A. Not to my -- I wouldn't have privy to that  
 14 information.  
 15 Q. Well --  
 16 A. I wouldn't know. Not to my knowledge. I should  
 17 say that.  
 18 Q. Well, did you receive any points for seniority  
 19 the time that you competed for team leader? Did  
 20 anybody get seniority points on that occasion?  
 21 A. The only thing I could say, everybody in there  
 22 had been there at least four or five years and  
 23 had -- the people that went out were with me and

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1 we didn't get any points. It was more or less  
 2 just me talking to you, you talking to me, and  
 3 we -- Somebody is giving you a set of questions,  
 4 and you answer them and they would give you a  
 5 score between one and six.  
 6 Q. But nobody got seniority points?  
 7 A. Not to my knowledge.  
 8 Q. And going back to the petition from team leader  
 9 to lieutenant, I know you said you signed the  
 10 petition with the understanding that it would be  
 11 taken to the court.  
 12 A. Yes.  
 13 Q. Weren't you apprised later that the City  
 14 determined that the court did not retain  
 15 jurisdiction and that that name change could be  
 16 made without going back through the court?  
 17 A. I believe I seen something to that on the  
 18 letterhead, something to that effect. But in my  
 19 position and what I've seen over the years, I  
 20 don't take -- I take it to mean -- anything I  
 21 see dealing with the courts and the City of  
 22 Auburn, I take it to believe that they are  
 23 going -- They'll write anything down and give it

<p style="text-align: right;">Page 133</p> <p>1 to you just to keep you from asking any further</p> <p>2 questions. That's what I believe.</p> <p>3 Q. Well, I'm not sure what that answer means, but</p> <p>4 let me ask you this.</p> <p>5 Didn't you get a letter or memorandum from</p> <p>6 the City advising that the City determined that</p> <p>7 they did not have to go back to the court, and</p> <p>8 you signed a second thing agreeing to the name</p> <p>9 change from team leader to lieutenant?</p> <p>10 A. No, I don't remember signing a second thing.</p> <p>11 Q. You only signed the petition?</p> <p>12 A. I know I signed the petition. I don't remember</p> <p>13 signing anything else.</p> <p>14 Q. You don't remember signing a second thing after</p> <p>15 you found that out?</p> <p>16 A. No, I don't remember that. I don't remember</p> <p>17 having to sign anything else.</p> <p>18 Q. Well, if you had been presented with something</p> <p>19 that said that the City had determined that they</p> <p>20 could do it, in essence, without going back</p> <p>21 through the court, would you have signed it?</p> <p>22 MR. HORSLEY: Object to the form.</p> <p>23 A. With that language on there, I probably would</p>	<p style="text-align: right;">Page 135</p> <p>1 being eligible to move to the next rank.</p> <p>2 Q. And I assume you have a copy of the letter that</p> <p>3 you can make available that went to Charles</p> <p>4 Duggan --</p> <p>5 A. Yes.</p> <p>6 Q. -- about the race?</p> <p>7 Who showed up for the hearing? Who was</p> <p>8 still on board as complaining about the</p> <p>9 procedure?</p> <p>10 A. Myself, Lieutenant Stephens, and Lieutenant</p> <p>11 Horace Clanton.</p> <p>12 Q. And y'all had a hearing in the -- before Judge</p> <p>13 Bailey?</p> <p>14 A. Before Judge Bailey, yes, sir.</p> <p>15 Q. And what happened after the hearing?</p> <p>16 A. Well, basically Judge Bailey sided with the</p> <p>17 City. They sent us about -- It was about maybe</p> <p>18 two weeks later they sent us a packet where they</p> <p>19 reaffirmed the decision not to promote us.</p> <p>20 Later we got a letter from Mr. Duggan</p> <p>21 reaffirming Judge Bailey's decision not to</p> <p>22 promote us.</p> <p>23 Q. And Mr. Clanton did not file a lawsuit?</p>
<p style="text-align: right;">Page 134</p> <p>1 have.</p> <p>2 Q. And then I think we've covered the initial thing</p> <p>3 of the grievance procedure. Y'all proceeded on</p> <p>4 through the grievance procedure?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And actually had a hearing?</p> <p>7 A. Yes.</p> <p>8 Q. But your testimony was at some point along at</p> <p>9 that process, y'all brought up about the race.</p> <p>10 A. It was the last letter addressed to Mr. Charlie</p> <p>11 Duggan.</p> <p>12 Q. By the way, do you know what section of the</p> <p>13 personnel rules that is that says you've got to</p> <p>14 be time in grade?</p> <p>15 A. No, it doesn't -- I didn't see anything. I said</p> <p>16 it's about probation. That's in the promotions</p> <p>17 part of it.</p> <p>18 Q. Do you know what section of the personnel --</p> <p>19 A. It will be a section that says promotions, and</p> <p>20 it will be under it.</p> <p>21 Q. And it says you have to be --</p> <p>22 A. If you're a firefighter or a police officer, you</p> <p>23 have to be on probation for one year before</p>	<p style="text-align: right;">Page 136</p> <p>1 A. No, he did not.</p> <p>2 Q. Is there anything different about Mr. Clanton's</p> <p>3 position on the promotion process and the way he</p> <p>4 was treated than your position and the way you</p> <p>5 were treated?</p> <p>6 A. There's one big difference. Mr. Clanton is not</p> <p>7 black.</p> <p>8 Q. That's the only difference, isn't it?</p> <p>9 A. Yes.</p> <p>10 Q. Sir?</p> <p>11 A. That's it.</p> <p>12 Q. Were you privy to a conversation where</p> <p>13 Mr. Clanton was told he did not have a suit</p> <p>14 because he was not black?</p> <p>15 A. I don't know if I was privy to that or not. I</p> <p>16 don't remember anything like that.</p> <p>17 Q. I'm going to ask you about these guys that were</p> <p>18 promoted, and I want you to tell me -- I'm going</p> <p>19 to ask you about Rodney Hartsfield. Is it your</p> <p>20 opinion that Mr. Hartsfield is or is not</p> <p>21 qualified to be a battalion chief?</p> <p>22 MR. HORSLEY: Object to the form.</p> <p>23 A. I can't make that -- I'm not a expert. All I</p>

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1 know is I am qualified and experienced and have  
 2 more qualifications and more experience than  
 3 Chief Hartsfield.  
 4 Q. Tell me how your qualifications are better and  
 5 how your experience is better than Chief  
 6 Hartsfield.  
 7 A. I feel this way: If they could give Chief  
 8 Garrett, Chief Lawrence, and Chief Leverette  
 9 those promotions based on -- obviously it was  
 10 based on their experience -- they could have  
 11 promoted me based on my experience and  
 12 qualifications.  
 13 Q. My question, though, is as to Mr. Hartsfield.  
 14 What is it about you that makes you more  
 15 qualified than Mr. Hartsfield?  
 16 MR. HORSLEY: Object to the form.  
 17 A. My years of service.  
 18 Q. Anything else?  
 19 A. No.  
 20 Q. I'm sorry?  
 21 A. No.  
 22 Q. What is there about your experience that makes  
 23 you more qualified than Mr. Hartsfield?

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1 A. This goes to the core of it.  
 2 Q. Goes to what?  
 3 A. This goes to the core of all of it with that.  
 4 Firefighting is not like going out here and  
 5 learning something, you know, across the street  
 6 at the bank or something -- learning how to be a  
 7 teller. Any different structure you pull up on,  
 8 it could be different. It could seem like it's  
 9 burning in the front room when it might be  
 10 burning on the bottom floor. And until you see  
 11 enough of that -- You gain more understanding  
 12 with the more that you see, and that's why your  
 13 years of service is so important.  
 14 Q. So, once again, going back, your experience --  
 15 you're more experienced than Mr. Hartsfield  
 16 because of your years of service?  
 17 A. That's right.  
 18 Q. Anything else?  
 19 A. That's it.  
 20 Q. What about, is it, Joe --  
 21 A. Joe Lovvorn. Same answer.  
 22 Q. Same answer as to why you think you're better  
 23 qualified to be a battalion chief is because of

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1 your years in service?  
 2 A. Yes, sir.  
 3 Q. Same answer?  
 4 A. Same answer.  
 5 Q. And as for Matt Jordan --  
 6 A. Same answer.  
 7 Q. -- same answer? You think you're better  
 8 qualified to be a battalion chief because of  
 9 your years in service?  
 10 A. Yes, sir.  
 11 Q. And Joey Darby?  
 12 A. Same answer.  
 13 Q. You think you're more qualified to be a  
 14 battalion chief because of your years in service  
 15 than Mr. Darby?  
 16 A. Yes, sir.  
 17 Q. I'm going to run through some of these witnesses  
 18 that y'all have listed, and I'm going to try to  
 19 do this quickly. These are people that you and  
 20 your attorney disclosed as having some  
 21 information about your case, and two of them are  
 22 William Thompkins and Jeremy Patterson.  
 23 A. Yes, sir.

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1 Q. First of all, what is it that they know about  
 2 your case; you're not being promoted to  
 3 battalion chief?  
 4 A. Basically I don't think they know anything about  
 5 my case. They just know that we didn't get  
 6 promoted.  
 7 Q. Do you know why they were listed as possible  
 8 witnesses or have some information on this case?  
 9 A. I think it's relevant how they were treated down  
 10 there when trying to get a job at Auburn Fire  
 11 Department.  
 12 MR. HORSLEY: I'm going to object to  
 13 that because I've drafted the  
 14 letter --  
 15 MR. MORGAN: I understand that.  
 16 MR. HORSLEY: -- as to -- Every person  
 17 whose name appears anywhere is on  
 18 that list so he's not going to  
 19 have any idea why some of them are  
 20 on there.  
 21 A. That's my opinion. I think they are relevant  
 22 because the way they put in for jobs down there  
 23 when the chief was telling me he knew he need to

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<p>1 hire some blacks, and I think that have some</p> <p>2 relevance to ...</p> <p>3 Q. To your knowledge they know nothing about your</p> <p>4 case?</p> <p>5 A. Exactly, to my knowledge.</p> <p>6 Q. But they were not hired, and they are black?</p> <p>7 A. That's right.</p> <p>8 Q. And Chris Turner. What is it that Chris</p> <p>9 Turner -- what do you think he knows about all</p> <p>10 this?</p> <p>11 A. Only thing I can say is Chris has been subjected</p> <p>12 to tests every time he gets ready to be</p> <p>13 promoted, and he's not being promoted.</p> <p>14 Q. Test. Now, has he ever had a written test</p> <p>15 before?</p> <p>16 A. Yes.</p> <p>17 Q. Was that for the last team leader?</p> <p>18 A. I don't know. I just know he was sitting there</p> <p>19 with the battalion chiefs.</p> <p>20 Q. Oh, he took the battalion chiefs with y'all?</p> <p>21 A. Yes, sir.</p> <p>22 Q. But you don't think he should have been able to</p> <p>23 take the battalion chiefs, do you?</p>	<p>1 know what he had to do with the battalion chief</p> <p>2 situation?</p> <p>3 A. He wasn't there when -- The ones that got</p> <p>4 promoted, it was Mr. Watkins that was there at</p> <p>5 that time, when Chief Garrett and them were</p> <p>6 promoted.</p> <p>7 Q. Do you know of any anything that Doug Watson has</p> <p>8 to do with either changing captains to battalion</p> <p>9 chief or the battalion chief procedure that you</p> <p>10 took?</p> <p>11 A. Not that I know of.</p> <p>12 Q. And Horace Clanton, he was -- wasn't he one of</p> <p>13 those that --</p> <p>14 A. He was on the grievance with us.</p> <p>15 Q. And Rodney Hartsfield was promoted?</p> <p>16 A. Promoted.</p> <p>17 Q. Anything else you know he might know about this</p> <p>18 other than being promoted?</p> <p>19 A. No.</p> <p>20 Q. Does he know anything about your complaints?</p> <p>21 A. No.</p> <p>22 Q. Have you ever discussed them with him?</p> <p>23 A. No. He's my immediate supervisor right now. I</p>
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<p>1 MR. HORSLEY: Object to the form.</p> <p>2 A. I know that by City policy, he was the only one</p> <p>3 other than Gerald Stephens qualified to be -- By</p> <p>4 the policy of non-probationary employees, they</p> <p>5 were the only two qualified to be sitting in</p> <p>6 there if we went by the City policy.</p> <p>7 Q. But he was not a lieutenant?</p> <p>8 A. No. And I don't think he should have been in</p> <p>9 there.</p> <p>10 Q. You don't think he should have ever taken the</p> <p>11 test, do you?</p> <p>12 A. That's right.</p> <p>13 MR. HORSLEY: Object to the form.</p> <p>14 Q. Marzilla Ogletree, that's your wife?</p> <p>15 A. Yes.</p> <p>16 Q. What does she know about this case or do you</p> <p>17 know anything that she would have -- any</p> <p>18 information she would have about this?</p> <p>19 A. Probably worried about me.</p> <p>20 Q. Delner Franklin Thomas with the EEOC, do you</p> <p>21 know who he is?</p> <p>22 A. No, I don't.</p> <p>23 Q. Douglas Watson, the former City manager, do you</p>	<p>1 don't ...</p> <p>2 Q. Do y'all have any problems with each other?</p> <p>3 A. No. I get along with Rodney fine.</p> <p>4 Q. Is he a good supervisor?</p> <p>5 MR. HORSLEY: Object to the form.</p> <p>6 A. I don't have any problem with him.</p> <p>7 Q. Matthew Jordan, do you know anything he knows</p> <p>8 specifically about your claims?</p> <p>9 A. No. He was just promoted.</p> <p>10 Q. Joe Lovvorn, do you know anything he knows about</p> <p>11 your claims?</p> <p>12 A. No.</p> <p>13 Q. Jason Brown, who is that? The name sounds</p> <p>14 familiar.</p> <p>15 A. He works on my shift with me.</p> <p>16 Q. Is he black or white?</p> <p>17 A. White.</p> <p>18 Q. Is there anything he knows about your promotion?</p> <p>19 A. No.</p> <p>20 Q. Have you discussed this lawsuit with him?</p> <p>21 A. No.</p> <p>22 Q. Has he ever told you he thought you should have</p> <p>23 been promoted?</p>



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1 A. Yes.  
 2 Q. What did he tell you?  
 3 A. They thought seniority and people that been  
 4 there should have been promoted just like the  
 5 people that had been there before like Chief  
 6 Garrett and Chief Lawrence.  
 7 Q. And how long has Jason Brown been there?  
 8 A. Probably eight years -- eight or nine years.  
 9 Probably eight years.  
 10 Q. Did he sit for the promotion to battalion chief?  
 11 A. Yeah, I believe he did. Yes, I believe he did.  
 12 I believe his name on that list.  
 13 Q. Paden Payton, do you know him?  
 14 A. No. He worked there, but I don't know him.  
 15 Q. Joey Darby?  
 16 A. He's the guy who promoted that challenged --  
 17 Q. That challenged the questions.  
 18 Terry Walker?  
 19 A. Ex-training officer.  
 20 Q. When did he leave?  
 21 A. Last year sometime. It might have been this  
 22 year, but he hadn't left over six months ago.  
 23 Q. Did he have to go through a promotion to be a

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1 training officer?  
 2 A. Yes, sir. Interview.  
 3 Q. Did you apply for training officer?  
 4 A. No, I didn't. But Lieutenant Stephens did.  
 5 Q. But you did not?  
 6 A. I did not.  
 7 Q. Was he a good training officer?  
 8 A. He was all right.  
 9 Q. Anything you know about -- that he knows about  
 10 the battalion chief promotion that you know of  
 11 or your complaints in this lawsuit?  
 12 A. He just spoke to me one day. I don't know if he  
 13 would recall this. He just spoke to me one day  
 14 and said he wouldn't have did it that way.  
 15 Q. Not did what that way?  
 16 A. The procedure -- the promotional procedure for  
 17 battalion chief.  
 18 Q. Did he tell you how he would have done it?  
 19 A. No. He just said, I told them I wouldn't did it  
 20 that way. I knew what he was talking about and  
 21 he knew I knew what he was talking about, and  
 22 that was it.  
 23 Q. Ronnie Blankenship?

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1 A. Ex-fire chief.  
 2 Q. When did he leave?  
 3 A. Was it 2000? He been gone -- Chief was chief  
 4 for about twelve years, Chief Langley, so he  
 5 been gone 12 or 13 years.  
 6 Q. Do you know what he knows about this case?  
 7 A. I have no idea.  
 8 Q. Do you know any information he has about any of  
 9 the promotion procedures or discrimination or  
 10 anything?  
 11 A. He probably would have some information because  
 12 his name was named when Lieutenant Strickland  
 13 and Lieutenant Card and all them were filing  
 14 their lawsuit.  
 15 Q. Stephanie King?  
 16 A. Human resource specialist, generalist.  
 17 Q. Do you remember anything she did in this  
 18 situation?  
 19 A. She just came in and I think maybe spoke -- She  
 20 might have spoke to us. I don't know.  
 21 Q. Joe Bailey, he heard the grievance?  
 22 A. He heard the grievance.  
 23 Q. Anything else?

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1 A. No.  
 2 Q. Michael Thee, who is he?  
 3 A. That's one of the student firefighters.  
 4 Q. Is he still a student firefighter?  
 5 A. Yes, he is.  
 6 Q. And did he apply for battalion chief?  
 7 A. No, he did not.  
 8 Q. Anything else that -- Anything he would know  
 9 about your case?  
 10 A. I haven't --  
 11 Q. Have you discussed it with him?  
 12 A. I have not.  
 13 Q. Casey McLeod?  
 14 A. Firefighter.  
 15 Q. Black or white?  
 16 A. White.  
 17 Q. Have you discussed your case with him?  
 18 A. No, I haven't.  
 19 Q. Do you know anything he would know about the  
 20 promotion procedure?  
 21 A. No.  
 22 Q. Did he apply?  
 23 A. No, he didn't.

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1 Q. Dean Garrett?  
 2 A. That's Chief Garrett I've been mentioning.  
 3 Q. Have you had any conversations with him? You  
 4 told me --  
 5 A. Yeah. I told you he mentioned that he had seen  
 6 the test questions. He mentioned that he didn't  
 7 think it was fair to the older guys. He  
 8 mentioned a couple of things to me.  
 9 Q. What else did he mention besides that?  
 10 A. That was about the gist of it. I can't --  
 11 Q. He had seen the test questions, and he --  
 12 A. He say he helped with them, and they had threw  
 13 some of them out already and that he didn't --  
 14 that they had helped with forming the test.  
 15 Q. And he didn't think it was fair to the older  
 16 guys?  
 17 A. Yes.  
 18 Q. Any other conversations you had with him?  
 19 A. No.  
 20 Q. Did you have any conversations with him after  
 21 you took the test about the test and what you  
 22 thought about it?  
 23 A. I just mentioned to him I didn't think it was

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1 right and that we were going to file a  
 2 grievance.  
 3 Q. What did he say?  
 4 A. He didn't say nothing. He had retired and he  
 5 came by so -- He didn't say anything.  
 6 Q. Then you've got a couple of folks listed with  
 7 the Auburn News: Amy Weaver and Lindsey Field.  
 8 A. I have no idea --  
 9 Q. Have you ever talked to them?  
 10 A. No.  
 11 Q. Jimmy Lee Brown?  
 12 A. He's deceased.  
 13 Q. What rank did he have when he was --  
 14 A. Battalion chief.  
 15 Q. Did he just die recently?  
 16 A. Yes. He died this year.  
 17 Q. Have you ever had any conversation with him  
 18 about the test or discrimination?  
 19 A. Yes, I did. He mentioned to me -- He had  
 20 mentioned to me something about discrimination,  
 21 and he had mentioned that he didn't think -- he  
 22 didn't think they were treating us right. He  
 23 mentioned that to me a couple of years ago.

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1 Q. Now, who is "us"?  
 2 A. African-Americans who worked there.  
 3 Q. Anything else he said other than he didn't think  
 4 they were treating "us" fair?  
 5 A. No.  
 6 Q. What was the substance of the conversation y'all  
 7 were having?  
 8 A. We just was talking. Just -- He come out. He  
 9 was my battalion chief at the time, and he just  
 10 say he just work here. And I said, well, I just  
 11 work here too. And he just mentioned that -- I  
 12 told him that I didn't think it was right how  
 13 they promote people and do things. And he just  
 14 mentioned he didn't think he had been treated --  
 15 He especially mentioned how they were doing  
 16 Chris, by him not being promoted and they trying  
 17 to make him pass a test to be promoted when they  
 18 know he can do the job.  
 19 Q. Well, did you ever specifically mention race or  
 20 was it just that you didn't like the way they --  
 21 A. He reminded me I was a minority. So, yeah, it  
 22 was race.  
 23 Q. Do you know why they changed the procedure to

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1 require a written test for team leader?  
 2 A. I have no idea.  
 3 Q. You don't have any idea about that?  
 4 A. I have no idea.  
 5 Q. You didn't hear anything about Chris Turner's  
 6 last lawsuit and why they changed that  
 7 procedure?  
 8 A. No, I did not.  
 9 Q. Did you know they changed that procedure because  
 10 of him?  
 11 A. No, I did not. I didn't know anything about it.  
 12 Q. And Wendall Willis?  
 13 A. He used to work there. He's retired.  
 14 Q. How long has he been gone?  
 15 A. Maybe over ten, eleven years I believe.  
 16 Q. James -- Did you ever have any conversation with  
 17 Wendall Willis about promotions or race or  
 18 discrimination?  
 19 A. No, I didn't.  
 20 Q. James Lyle.  
 21 A. He's another --  
 22 Q. Been gone a long time?  
 23 A. Yeah.

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<p>1 Q. Have you had any conversation with him about any</p> <p>2 of this?</p> <p>3 A. No.</p> <p>4 Q. Tommy James?</p> <p>5 A. He's gone. He's retired.</p> <p>6 Q. Have you had any conversation with him about</p> <p>7 race --</p> <p>8 A. No.</p> <p>9 Q. -- or promotions or anything?</p> <p>10 A. No.</p> <p>11 Q. Kenneth Lee Smith?</p> <p>12 A. No, I haven't had any conversation with him. He</p> <p>13 retired too.</p> <p>14 Q. How long has he been gone, a while?</p> <p>15 A. Yeah. All them guys been gone a while.</p> <p>16 Q. You haven't had any discussion with him about</p> <p>17 race discrimination or promotion --</p> <p>18 A. No.</p> <p>19 Q. Ron Jones?</p> <p>20 A. Ronnie Jones?</p> <p>21 Q. Who is he?</p> <p>22 A. He was a captain there.</p> <p>23 Q. Has he been gone a while?</p>	<p>1 A. He was gone before I started working there.</p> <p>2 Q. Before you started working there?</p> <p>3 A. Yeah.</p> <p>4 Q. You haven't had any conversations with him, have</p> <p>5 you?</p> <p>6 A. No.</p> <p>7 Q. Larry Stanley?</p> <p>8 A. Another one. He was gone before I started</p> <p>9 working there.</p> <p>10 Q. Have you had any conversations with him?</p> <p>11 A. No.</p> <p>12 Q. Gary Jones?</p> <p>13 A. No. He's gone too.</p> <p>14 Q. Have you had any conversation with him?</p> <p>15 A. No.</p> <p>16 Q. Jan Dempsey?</p> <p>17 A. Ex-mayor, no.</p> <p>18 Q. Have you had any conversation with her about</p> <p>19 anything to do with this discrimination or</p> <p>20 hiring --</p> <p>21 A. I don't know if she was the mayor when they</p> <p>22 filed that last lawsuit. But, no, I haven't</p> <p>23 talked to her anything about it.</p>
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<p>1 A. Yeah. About five years.</p> <p>2 Q. Did you have any conversation with him about</p> <p>3 discrimination or the test or anything?</p> <p>4 A. No, I didn't.</p> <p>5 Q. Dexter Card, have you had any conversation with</p> <p>6 him?</p> <p>7 A. No, I haven't.</p> <p>8 Q. I think you told me earlier you haven't --</p> <p>9 A. I haven't even seen him.</p> <p>10 Q. Since he left?</p> <p>11 A. Since he left.</p> <p>12 Q. How about William Felton?</p> <p>13 A. No.</p> <p>14 Q. No conversation with him?</p> <p>15 A. No.</p> <p>16 Q. Have you talked to him about this lawsuit or</p> <p>17 anything?</p> <p>18 A. No.</p> <p>19 Q. Thomas Scott? Have you discussed anything with</p> <p>20 him about this case or does he know anything</p> <p>21 about this case?</p> <p>22 A. No.</p> <p>23 Q. Steve Heart, who is he?</p>	<p>1 Q. Ron Tahita?</p> <p>2 A. I think he was an OHR director.</p> <p>3 Q. And he's been gone a while, hasn't he?</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever had any conversations with him --</p> <p>6 A. No.</p> <p>7 Q. -- about race or promotions or anything?</p> <p>8 A. No.</p> <p>9 Q. And Ellis Mitchell?</p> <p>10 A. I mentioned him. I haven't had any</p> <p>11 conversations with him.</p> <p>12 Q. When did you mention him?</p> <p>13 A. I mentioned him earlier when you told me --</p> <p>14 Q. He's been gone from the City a long --</p> <p>15 A. He's been gone a long time.</p> <p>16 Q. Does he still live in the city?</p> <p>17 A. He lives in Loachapoka, I believe.</p> <p>18 Q. Have you had any conversation with him about</p> <p>19 this lawsuit or your complaints or race</p> <p>20 discrimination?</p> <p>21 A. No, I haven't.</p> <p>22 Q. Let me ask you about some of the allegations in</p> <p>23 your complaint. In paragraph 23 you complain</p>



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1 that the test -- I think we've been over this --  
 2 the City allowed non-probationary and  
 3 probationary lieutenants, including entry-level  
 4 firefighters, to apply for battalion chief  
 5 promotion. That's one of your complaints?  
 6 A. Yes.  
 7 Q. And the only non-probationary non-lieutenant was  
 8 Chris Turner?  
 9 A. Yes, sir.  
 10 Q. Were there any probationary lieutenants that  
 11 were allowed to apply for the battalion chief  
 12 position?  
 13 A. My position is that it was all of us guys that  
 14 had just got promoted from team leader to  
 15 lieutenant.  
 16 Q. So that included you?  
 17 A. That included me.  
 18 Q. And number 24 is that you -- the City changed  
 19 its policy and required a written test.  
 20 And you complained about a written test  
 21 being -- Well, if I remember, you complained  
 22 about the cutoff score?  
 23 A. The cutoff score.

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1 Q. You're okay with the written test?  
 2 A. I'm okay with some form of a written test, but  
 3 if that's all you're getting judged on, I'm not  
 4 okay with it.  
 5 Q. And you say that coincidentally that policy  
 6 change occurred when two African-American  
 7 lieutenants and one entry-level --  
 8 What's coincidental about that?  
 9 MR. HORSLEY: Object to the form.  
 10 A. Well, all I know is before then, they were not  
 11 using a test with a cutoff score -- a written  
 12 test with a cutoff score. And we seem to have a  
 13 bit of an edge at that particular time, and then  
 14 the policy changed when the three  
 15 African-Americans became -- well, two of them  
 16 were eligible.  
 17 Q. And then you've got in there, of course, the  
 18 seniority was discarded. I want to be clear on  
 19 this. Can you name any promotional procedure  
 20 since the settlement of the Clinton Hammock  
 21 lawsuit in which seniority was given any credit?  
 22 A. I'll put it this way. Every battalion chief I  
 23 ever worked for had at least 15 years -- or

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1 captain had at least 15 years' experience or  
 2 more. So whether they put it in writing or not,  
 3 it was given weight.  
 4 Q. So before they became a captain or battalion  
 5 chief, they had at least 15 years' experience?  
 6 A. Yeah. The guys I worked for had at least 15  
 7 years' experience.  
 8 Q. Let's go back to my question on the promotion  
 9 procedure. Do you know of any promotion  
 10 procedure --  
 11 A. No.  
 12 Q. -- since the settlement of the Clinton Hammock  
 13 lawsuit in which credit was given for seniority?  
 14 A. Chief Lawrence, Chief Garrett, Chief Brown, and  
 15 Chief Leverette.  
 16 Q. And that's the name change?  
 17 A. That's a promotion to me.  
 18 Q. Did their duties change any?  
 19 A. No. When somebody tell me they are the chief  
 20 and I work for them, it changed.  
 21 Q. Well, you worked for him when he was a captain.  
 22 A. Yeah. And he come down and made sure I knew he  
 23 was the chief.

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1 Q. Whether he called himself the chief or captain,  
 2 did your relationship change any?  
 3 A. Not my relationship, no.  
 4 Q. Did his duties change any?  
 5 A. I have no idea.  
 6 Q. Well, did you know -- you told me before you  
 7 knew what a battalion chief did and you knew  
 8 what a captain did. Did the duties change  
 9 between a captain and --  
 10 A. Not to my knowledge.  
 11 Q. Did he get any more pay?  
 12 A. I wouldn't have that information.  
 13 Q. And you didn't make any complaint with anybody  
 14 when the name change occurred, did you?  
 15 A. No, I did not.  
 16 Q. Let's see. Then you've got 25. The denial of  
 17 your promotion to battalion chief was racially  
 18 based.  
 19 Tell me why you claim that you were not  
 20 promoted based on your race.  
 21 MR. HORSLEY: As much as its been  
 22 answered numerous times, I object  
 23 to the form. But go ahead.

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<p>1 A. All I know is three African-Americans were 2 eligible to be hired -- promoted to battalion 3 chief, and all the promotions went to four white 4 guys -- four Caucasian males. 5 Q. Is that the only basis, evidence, hearsay, 6 documents? Anything else that you have that 7 supports your allegation that you were denied 8 promotion because of your race? 9 MR. HORSLEY: Same objection. You can 10 answer. 11 A. No. 12 Q. Just that you and two other blacks were not 13 promoted and four whites were? 14 MR. HORSLEY: Same objection. 15 Q. True? 16 A. Exactly. 17 Q. In number 26 you say that Caucasian or white 18 applicants for battalion chief were given 19 preferential treatment regarding the application 20 process, test aids, and test grades. 21 What Caucasians were given preferential 22 treatment? 23 A. All I know is Chief Garrett told me he had seen</p>	<p>1 process? 2 A. No, I don't. I don't know. 3 Q. What do you mean by application process? 4 MR. HORSLEY: Object to the form. He 5 didn't write it. 6 MR. MORGAN: Well, I understand, but 7 it's my only chance to ask him. I 8 understand. I'm sorry. 9 Q. What do you mean by application process? 10 MR. HORSLEY: Object to the form. 11 A. I didn't write it. I have no idea. 12 Q. Do you know of any white applicant that received 13 more test aids than you did from the City or 14 any -- 15 A. I wouldn't be privy to that. If it happened, I 16 wouldn't be privy to that. 17 Q. The answer to my question is: You don't know of 18 any, do you? 19 A. I don't. 20 Q. Do you know of any white applicants that were 21 given preferential treatment on their test 22 grades? 23 A. Obviously Chief Garrett and them were. They</p>
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<p>1 the questions. And if he had seen some of the 2 questions, I don't know what happened. I don't 3 know what -- I can't say what happened. I 4 don't -- But I just know somebody -- he say he 5 had seen those questions. 6 Q. Well, so what? He wasn't an applicant, was he? 7 A. I have -- 8 MR. HORSLEY: Object. 9 Q. Was he an applicant for battalion chief? 10 A. No, he was not. 11 Q. This specifically says that Caucasian applicants 12 were given preferential treatment regarding 13 application process, test aids, and test 14 grades. 15 What Caucasian applicants were given 16 preferential treatment? 17 A. I have no idea. 18 Q. Can you name a single one? 19 A. No, I cannot. 20 Q. Do you know of any? 21 A. No, I don't. 22 Q. Do you know any white applicants that received 23 preferential treatment in the application</p>	<p>1 didn't take a test. 2 Q. That's not the question now, Mr. Ogletree. 3 Let's stay focused on the battalion chief 4 promotion that was given in April of 2006. 5 A. I was talking about the other one. I don't 6 know. 7 Q. Do you know of any white applicants that got 8 preference on their test grades? 9 A. I don't know. 10 Q. Look at number 27. You make a reference to the 11 City violating and continuing to violate a 12 federal court order requiring them to alter 13 hiring and promotion policies and procedures to 14 provide equitable treatment to 15 African-Americans. 16 What court order are you referring to? 17 MR. HORSLEY: Object to the form. 18 A. I don't know. 19 Q. Well, what is it that you say the City is doing 20 wrong that they violate a federal court order? 21 MR. HORSLEY: Object to the form. 22 Q. Do you know? 23 A. I'd say giving the test to weed out</p>

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1 African-American applicants. They are running  
 2 the student firefighter program and not getting  
 3 any African-Americans to apply and therefore be  
 4 hired full-time.  
 5 Q. I'm sorry. I missed the first one. Something  
 6 about test.  
 7 A. Yeah. They decided to change the policies and  
 8 give a test and weed out African-American  
 9 applicants from being promoted.  
 10 Q. And then they do the student firefighter  
 11 program, and blacks don't get hired, or  
 12 African-Americans?  
 13 A. Exactly.  
 14 Q. Do you know what advertising the City does for  
 15 the student firefighter program?  
 16 A. I know some of it. I know they recently tried  
 17 to improve on some of it, I guess, when they  
 18 started going around to more schools. But they  
 19 had quit going anywhere for a long time.  
 20 Q. When did they quit going anywhere?  
 21 A. Because I went and talked to some -- to a church  
 22 at one time about twelve years ago and -- talked  
 23 to an African-American church and talked to some

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1 A. Yeah. Twelve or thirteen.  
 2 Q. Because you went out there?  
 3 A. Because I went out there, and I could speak for  
 4 that.  
 5 Q. You don't know how many folks that led to apply,  
 6 do you?  
 7 A. Exactly. I don't know. I wouldn't have  
 8 privilege to that information.  
 9 Q. Do you know if Gerald Stephens ever went to any  
 10 churches?  
 11 A. No, I don't.  
 12 Q. Do you know of anything else the City has done  
 13 in the last twelve or thirteen years to try to  
 14 get more applicants from the minority blacks?  
 15 A. No, I don't.  
 16 Q. How is the City violating, in your opinion, a  
 17 court order on promotion process?  
 18 MR. HORSLEY: Object to the form.  
 19 A. All I know is I got promoted in 1996, in June.  
 20 Lieutenant Stephens were promoted in April.  
 21 He's applied for several jobs and didn't get  
 22 them. I've applied for one. I was looking at  
 23 him struggle through the process, and I was,

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1 people trying to get some people to come in.  
 2 Q. At the request of the City?  
 3 A. At the request of -- It was at the request of my  
 4 training chief. I guess he had got orders from  
 5 somebody. I don't know who it was.  
 6 Q. And so you went to a black church and tried to  
 7 recruit people to apply for the student  
 8 firefighter program?  
 9 A. But they stopped. And I know they stopped --  
 10 Q. Let's go back to that.  
 11 A. Yes, I did.  
 12 Q. And how many people from that black church  
 13 applied?  
 14 A. I have no idea.  
 15 Q. Do you know of any?  
 16 A. All I know is we put on a seminar.  
 17 Q. And did they do that in other black churches?  
 18 A. That's the one I went to.  
 19 Q. You don't know what else they did?  
 20 A. I don't know what else they did.  
 21 Q. Why do you say you know they've quit that?  
 22 A. I just know they hadn't did it in a while.  
 23 Q. But you know they did it about twelve years ago?

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1 like, they still not going to promote us. And  
 2 then I looked back at Chris Turner, and he get  
 3 beat side the head every day when he goes in and  
 4 take those tests, whatever they give him in  
 5 there, and he has to supervise guys and they  
 6 come in and outrank him in a year. And that's  
 7 what I know. And we are the only three blacks  
 8 there. That's what I knew are those facts.  
 9 Q. And you sat on -- Are they structured interviews  
 10 for Chris Turner, for team leader?  
 11 A. I know the one I sat in on was a structured  
 12 interview.  
 13 Q. Do y'all get together and talk about the  
 14 applicants after that and make sure everybody is  
 15 consistent or talk about the grading?  
 16 A. They did. Sometime they would.  
 17 Q. Well, did you?  
 18 A. Yeah. I did that time.  
 19 Q. Well, did you think the people were unfair in  
 20 their evaluations of Chris Turner or the other  
 21 applicants when you did it?  
 22 MR. HORSLEY: Object to the form.  
 23 A. At that point I didn't think about it. I didn't

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<p>1 think about it. I was in there and I gave him a</p> <p>2 score, and I scored him pretty well. That's all</p> <p>3 I was concerned with.</p> <p>4 Q. Now, you've got a complaint in here for</p> <p>5 retaliation. It says you engaged in</p> <p>6 statutorily-protected expressions such as EEOC</p> <p>7 charges and grievances.</p> <p>8 My understanding is you had never filed an</p> <p>9 EEOC charge or grievance before this.</p> <p>10 A. No.</p> <p>11 Q. Is there any other statutorily-protected</p> <p>12 expressions that you think you engaged in that</p> <p>13 resulted in you being denied a promotion?</p> <p>14 MR. HORSLEY: Object to the form.</p> <p>15 A. I didn't engage in it directly, but I think I</p> <p>16 suffered for that 1996 lawsuit of Lieutenant</p> <p>17 Strickland, Lieutenant Card, and Lieutenant Bill</p> <p>18 Felton, and Chris Turner.</p> <p>19 Q. How do you suffer for that?</p> <p>20 A. I think that they just made up their mind they</p> <p>21 didn't want any blacks working there anymore,</p> <p>22 that if they get rid of us, they'll be fine, and</p> <p>23 that they wasn't going to promote us, and they</p>	<p>1 what it means to me.</p> <p>2 Q. And I know you didn't draft this, but I just</p> <p>3 want you to explain to me what you understand</p> <p>4 your suit is about the disparate impact.</p> <p>5 MR. HORSLEY: Object to the form.</p> <p>6 A. I didn't write it.</p> <p>7 Q. I understand.</p> <p>8 A. But in layman terms, the way they select people</p> <p>9 through the student firefighter program. Like I</p> <p>10 said, the last black person that was hired was</p> <p>11 twelve years ago. The way they promote is --</p> <p>12 There's three of us down there. Chris has been</p> <p>13 there 20-something years and still making</p> <p>14 firefighters pay, but he can do the job and</p> <p>15 everybody is confident in his abilities to do</p> <p>16 his job. Everybody got weaknesses.</p> <p>17 I can't get promoted. I've been there</p> <p>18 working on 25 years now, and they come up with</p> <p>19 different rules and sets. And I know it's</p> <p>20 affecting us. I can't worry about who else it's</p> <p>21 affecting. It's affecting us three</p> <p>22 African-Americans that work there and the</p> <p>23 ones -- the potential of keeping ones from ever</p>
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<p>1 wasn't going to hire anymore to make sure no</p> <p>2 more ever worked there if they could get away</p> <p>3 with it.</p> <p>4 Q. But you didn't participate in that lawsuit?</p> <p>5 A. No. I didn't participate in it, but I'm just as</p> <p>6 black as they were.</p> <p>7 Q. Did they ask you to participate in it?</p> <p>8 A. No. I make my own mind up. This is serious</p> <p>9 business.</p> <p>10 Q. But in terms of you actually participating in</p> <p>11 any statutorily-protected expression, you can't</p> <p>12 name any of that, can you?</p> <p>13 MR. HORSLEY: Object to the form.</p> <p>14 A. No, sir.</p> <p>15 Q. And then we have here that the employment</p> <p>16 practices of the City -- of the defendants --</p> <p>17 I'm going get to the defendants in a minute.</p> <p>18 What does this mean to you, built-in</p> <p>19 headwind?</p> <p>20 MR. HORSLEY: Object to the form.</p> <p>21 A. It means something that's put there that really</p> <p>22 don't carry any weight, but it stops a</p> <p>23 particular group from advancing. That's exactly</p>	<p>1 working there.</p> <p>2 Q. Have you had any conversations with Larry</p> <p>3 Langley about this promotion procedure or race</p> <p>4 discrimination?</p> <p>5 A. Two things he said to me was he know he need to</p> <p>6 hire some blacks.</p> <p>7 Q. Now, what year did he say that?</p> <p>8 A. He said that right before we had that battalion</p> <p>9 chiefs exam in 2005. He mentioned that to me.</p> <p>10 Q. Anything else he said --</p> <p>11 A. After the test I had talked with him about I</p> <p>12 didn't think it was fair the way they did the</p> <p>13 procedure.</p> <p>14 Q. And what did he say?</p> <p>15 A. I didn't have nothing to do with it. That's</p> <p>16 exactly what he said: I didn't have nothing to</p> <p>17 do with it.</p> <p>18 Q. Any other conversations you've had with him</p> <p>19 about this lawsuit or your complaints --</p> <p>20 A. No, sir.</p> <p>21 Q. -- for promotion, hiring, race discrimination or</p> <p>22 anything?</p> <p>23 A. No, sir.</p>

<p style="text-align: right;">Page 173</p> <p>1 Q. Any conversations you've had with Lee Lamar 2 about your complaints, this lawsuit, promotion, 3 hiring, race discrimination? 4 A. Other than when I made that little gesture about 5 my reservations about the test. 6 Q. The ones you already told me about? 7 A. Yes. 8 Q. Anything else you talked to Lee about? 9 A. No, sir. 10 Q. Any conversations you had with Mayor Ham about 11 your complaints, promotions, hiring, race 12 discrimination? 13 A. No, sir. 14 Q. This lawsuit? 15 A. No, sir. 16 Q. Have you ever spoken to Mayor Ham about 17 anything? 18 A. No, sir. 19 Q. Steve Reeves. Any conversations you've had with 20 Steve Reeves about the procedure, the test, race 21 discrimination, hiring, promotion, complaints, 22 this lawsuit? 23 A. No, sir, I haven't spoken to Mr. Reeves.</p>	<p style="text-align: right;">Page 175</p> <p>1 A. No. No, sir. He just took over that job 2 probably a year and a half ago. 3 Q. Did you ever have any with his predecessor, 4 David Watkins? 5 A. No, sir. 6 Q. Did you ever have any with Doug Watkins? 7 A. No, sir. 8 Q. Did you ever have any conversation with Cortez 9 Lawrence complaining about race discrimination 10 or promotions or hiring? 11 A. No, sir. 12 Q. If you would, just summarize for me what your 13 complaints are, why you filed this lawsuit. 14 MR. HORSLEY: Object to the form. 15 A. I got the way the City conducts its policy and 16 procedures as far as using that test and that 17 that disparate impact claim, because you can 18 look around at the numbers and you can tell it's 19 having an impact. 20 Q. And I guess the gist of all that is that you're 21 complaining that you've been denied a promotion 22 because of your race? 23 A. Yes, sir.</p>
<p style="text-align: right;">Page 174</p> <p>1 Q. Bill James. Any conversations you've had with 2 him about this lawsuit, your complaints, race 3 discrimination, promotion, hiring, procedures, 4 tests? 5 A. No, sir. 6 Q. Any conversations with Bill James? 7 A. No, sir. 8 Q. Charles Duggan. Any conversations with Charles 9 Duggan -- 10 A. Other than that correspondence, that letter that 11 we sent. 12 Q. Written correspondence? 13 A. Yes. 14 Q. Any verbal communication? 15 A. (Witness nods head negatively.) 16 Q. Ever spoken to him about anything? 17 A. Other than just -- 18 Q. Hey, how are you? 19 A. Yeah. 20 Q. You never talked to Charles Duggan about your 21 complaints, this lawsuit, policies, procedures, 22 hiring, promotion, race discrimination or 23 anything?</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. As a result of -- 2 A. Of the policy of giving that test with that 3 cutoff score. 4 Q. And the disparate impact? 5 A. Yes. 6 Q. Tell me what you understand, if anything, that 7 Larry Langley had to do with the two things that 8 you just told me about. 9 A. He didn't hire -- He was telling me he know he 10 need to hire some blacks. And he was a 11 decision-maker so I figured if he was telling 12 me, he could go out and make something 13 happened. And he upheld the fact to give us 14 this promotional procedure. 15 Q. Anything else you think Larry Langley did to 16 discriminate against you on the basis of your 17 race? 18 A. No. Those two. 19 Q. What do you think Lee Lamar did to discriminate 20 against you on the basis of your race? 21 A. He was part of the decision-making process to do 22 it this way, to promote this way. 23 Q. The procedure that was in place?</p>



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1 A. Exactly.  
 2 Q. Written test and the assessment center?  
 3 A. Exactly.  
 4 Q. Anything specifically you know that Lee did?  
 5 A. No.  
 6 Q. What is it that Mayor Ham did that you think --  
 7 A. His decision --  
 8 Q. Let me get my question out.  
 9 What is it that Mayor Ham did in your  
 10 opinion that discriminated against you on the  
 11 basis of your race?  
 12 A. I'm sorry about cutting you off.  
 13 He's a decision-maker, and he upheld that  
 14 decision when we filed the grievance.  
 15 Q. Upheld the grievance?  
 16 A. Upheld the decision not to promote us after we  
 17 filed a grievance. I guess he in the chain.  
 18 Q. Well, do you know of anything in particular he  
 19 did in regard to the test or the promotion  
 20 procedure?  
 21 A. No, not anything particular.  
 22 Q. Other than being mayor, do you know of any  
 23 involvement he had in this?

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1 A. No, sir.  
 2 Q. And Steve Reeves. What is it that you think  
 3 Steve Reeves has done to discriminate against  
 4 you on the basis of race?  
 5 A. He upheld the decision. He was part of the  
 6 chain that made the decision to promote this  
 7 way.  
 8 Q. To implement the procedure you're complaining  
 9 about?  
 10 A. Yes, sir.  
 11 Q. Anything else that Steve Reeves did?  
 12 A. Not that I can think of.  
 13 Q. I don't want to keep beating this up. Let's say  
 14 that's true. Let's say Steve Reeves had some  
 15 input. Do you say he did that knowing it was  
 16 going to affect blacks?  
 17 MR. HORSLEY: Object to the form.  
 18 A. I have no idea. I know it did affect blacks. I  
 19 can't say what they were thinking before.  
 20 Q. I understand that, but you sued him claiming he  
 21 racially discriminated against you --  
 22 A. That's the way it end up.  
 23 Q. Other than approving the policy, if he did,

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1 other than whatever input he had in the  
 2 promotion procedure, you say he intentionally  
 3 did that to discriminate against you on the  
 4 basis of your race?  
 5 MR. HORSLEY: Object to the form.  
 6 A. I can't say he intentionally did anything.  
 7 Q. Well, let's go through it, and I'll get that  
 8 question next.  
 9 Bill James. What do you say Bill James did  
 10 to discriminate against you on the basis of your  
 11 race?  
 12 A. He upheld the decision to promote this way --  
 13 use the procedure to promote.  
 14 Q. And Charles Duggan, what do you say --  
 15 A. He had the final say, and he upheld the decision  
 16 not to promote us.  
 17 Q. Let's say you're correct, that all these six  
 18 folks -- Langley, Lamar, Ham, Reeves, James, and  
 19 Duggan -- all had a hand in agreeing to the  
 20 procedure that was being used. Do you have any  
 21 evidence, any facts, any hearsay, any documents,  
 22 anything that would lend weight to a claim that  
 23 those people did it with the purpose of racially

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1 discriminating against you and Lieutenant  
 2 Stephens?  
 3 MR. HORSLEY: Object to the form.  
 4 A. Everything I have, sir, my lawyer has, documents  
 5 and otherwise. So I wouldn't -- I'm not a legal  
 6 mind. That's why we hired him.  
 7 Q. But do you know of anything?  
 8 A. No, I don't.  
 9 Q. Do you know of any reason that Larry Langley  
 10 would discriminate against you on the basis of  
 11 your race?  
 12 A. I don't have any evidence, and I don't know  
 13 anything.  
 14 Q. In summary, is it fair to say that you don't  
 15 have any evidence that any of these individuals  
 16 discriminated against you? Your complaint is  
 17 that the procedure was in place, and you didn't  
 18 get promoted as a result of the procedure in  
 19 place?  
 20 MR. HORSLEY: Object to the form.  
 21 A. Yes, sir.  
 22 Q. You don't know of anything that Lee did or Steve  
 23 did or Bill Ham or James or anybody did to keep

Page 181	Page 183
<p>1 you from being promoted because of your race?</p> <p>2 MR. HORSLEY: Object to the form.</p> <p>3 A. I don't have -- No, sir.</p> <p>4 MR. MORGAN: I've got one little</p> <p>5 area. If we can take about a</p> <p>6 five-minute break, I may be about</p> <p>7 through.</p> <p>8 MR. HORSLEY: Okay.</p> <p>9 (Brief recess.)</p> <p>10 Q. (Continuing by Mr. Morgan) Tell me what damages</p> <p>11 you claim in this lawsuit. How do you claim</p> <p>12 you've been damaged and what do you seek for</p> <p>13 relief?</p> <p>14 MR. HORSLEY: Object to the form.</p> <p>15 A. I think it's punitive.</p> <p>16 Q. Punitive?</p> <p>17 A. I think it's punitive damages on there.</p> <p>18 Q. Well --</p> <p>19 A. And compensatory.</p> <p>20 Q. Tell me what compensatory damages you claim</p> <p>21 you've been denied or that you're entitled to.</p> <p>22 MR. HORSLEY: Object to the form.</p> <p>23 A. That's the raise that go along with being</p>	<p>1 and so I ...</p> <p>2 Q. How long have you had that?</p> <p>3 A. Years.</p> <p>4 Q. Who do you see for that?</p> <p>5 A. Dr. Boyer.</p> <p>6 Q. Do you have what I call a family doctor or</p> <p>7 primary care physician?</p> <p>8 A. Yes.</p> <p>9 Q. Who is that?</p> <p>10 A. I'm trying to call his name. He got a foreign</p> <p>11 name. I missed my last appointment so -- I</p> <p>12 can't think of his name right off, but I got a</p> <p>13 family doctor I see.</p> <p>14 Q. Have you seen any psychiatrists or</p> <p>15 psychologists --</p> <p>16 A. No, sir.</p> <p>17 Q. -- or mental health specialists for this</p> <p>18 weighing on your mind?</p> <p>19 A. No, sir.</p> <p>20 Q. Received any medications or prescriptions for</p> <p>21 sleeping or nerves or being anxious or anything?</p> <p>22 A. No, sir. I take blood pressure medication,</p> <p>23 but --</p>
Page 182	Page 184
<p>1 promoted, the raise in your retirement benefits.</p> <p>2 Q. Any other money damages?</p> <p>3 A. I wouldn't know any right now when it comes to</p> <p>4 that. I know that's immediate right there.</p> <p>5 That's immediate effect.</p> <p>6 Q. Do you make any claim for mental anguish or</p> <p>7 emotional distress?</p> <p>8 A. Like I said before, my wife worry about me</p> <p>9 because I'm usually a pretty happy-go-lucky</p> <p>10 guy. And it's been weighing on me a little bit.</p> <p>11 Q. What do you mean by weighing in on you?</p> <p>12 A. You know, I'm thinking about it all the time.</p> <p>13 I'm bothering her, you know. I don't take</p> <p>14 lightly what's going on here and everything, and</p> <p>15 it's just -- You know, to think that you done</p> <p>16 put as many years as I have at a place and to be</p> <p>17 denied a promotion, it just bothers you. It</p> <p>18 bothers you.</p> <p>19 Q. Well, have you been to see any doctors about</p> <p>20 being bothered?</p> <p>21 A. No. I got doctors I see, but not lately.</p> <p>22 Q. What doctors do you see?</p> <p>23 A. Well, I got a chronic stomach problem anyway,</p>	<p>1 Q. You already did that before?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Have you complained to Boyer or this</p> <p>4 foreign-named doctor or any other doctor about</p> <p>5 anxiety, nervousness, complaints about this</p> <p>6 lawsuit or anything?</p> <p>7 A. No, sir.</p> <p>8 Q. Complaints about any of your employment with the</p> <p>9 City or promotion?</p> <p>10 A. I just --</p> <p>11 Q. Any complaints or seen any medical providers,</p> <p>12 psychological or anybody?</p> <p>13 A. No, I haven't complained to any.</p> <p>14 Q. Any other compensatory damages other than the</p> <p>15 raise, increase in retirement benefits, and the</p> <p>16 mental anguish and emotional distress?</p> <p>17 A. No.</p> <p>18 Q. And you said punitive damages. Is there</p> <p>19 anything that you know of that these six</p> <p>20 individuals that you've sued -- let me just</p> <p>21 rephrase it -- that any of these individuals</p> <p>22 you've sued has done wrong that you think would</p> <p>23 entitle you to punitive damages from them?</p>

<p style="text-align: right;">Page 185</p> <p>1 MR. HORSLEY: Object to the form.</p> <p>2 A. No.</p> <p>3 Q. I think we've been through this before. You</p> <p>4 don't know of anything they did to intentionally</p> <p>5 discriminate against you because of your race?</p> <p>6 A. No. That's right. I don't know.</p> <p>7 Q. Have we covered all your damages?</p> <p>8 A. I think that's it.</p> <p>9 MR. MORGAN: That's it.</p> <p>10 EXAMINATION</p> <p>11 BY MR. HANCOCK:</p> <p>12 Q. Mr. Ogletree, I want to make sure I fully</p> <p>13 understand your disparate impact claim. My</p> <p>14 understanding is you're not claiming that the</p> <p>15 test -- the CWH test itself had a negative</p> <p>16 impact on black employees at the Auburn Fire</p> <p>17 Department, are you?</p> <p>18 A. Not the test itself.</p> <p>19 Q. It's the policy that utilizes the test as part</p> <p>20 of it, but it was the policy that didn't take</p> <p>21 into consideration years of service, that didn't</p> <p>22 allow all applicants to go through all phases of</p> <p>23 the process, including the practical side, the</p>	<p style="text-align: right;">Page 187</p> <p>1 that's --</p> <p>2 Q. Well, you thought -- do you think the test</p> <p>3 fairly tested what a battalion chief did at the</p> <p>4 City of Auburn, the written test?</p> <p>5 MR. HORSLEY: Object to the form.</p> <p>6 A. I answered it -- I told -- It's back in my</p> <p>7 testimony that I didn't think some components of</p> <p>8 it we used at the City of Auburn.</p> <p>9 MR. MORGAN: Okay.</p> <p>10 EXAMINATION</p> <p>11 BY MR. HANCOCK:</p> <p>12 Q. But you're not claiming in this lawsuit that the</p> <p>13 vagueness of the test is what caused the adverse</p> <p>14 impact. It's the City's policy of not taking</p> <p>15 into consideration other factors and allowing</p> <p>16 the applicants to go through the entire process?</p> <p>17 MR. MORGAN: Object to the form of</p> <p>18 that question.</p> <p>19 MR. HANCOCK: I'm just asking what his</p> <p>20 claim is in this lawsuit.</p> <p>21 A. Yes, sir.</p> <p>22 EXAMINATION</p> <p>23 BY MR. MORGAN:</p>
<p style="text-align: right;">Page 186</p> <p>1 assessment, the in-basket and that sort of</p> <p>2 thing, and result in a total score of looking at</p> <p>3 all components of the process; is that correct?</p> <p>4 A. Yes, sir.</p> <p>5 MR. HANCOCK: No further questions.</p> <p>6 MR. MORGAN: Is that it?</p> <p>7 MR. HANCOCK: Richard, do you mind if</p> <p>8 I ask Mr. Stephens those same</p> <p>9 questions?</p> <p>10 MR. HORSLEY: That's fine.</p> <p>11 (Off-the-record discussion.)</p> <p>12 EXAMINATION CONTINUING OF MR. OGLETREE</p> <p>13 BY MR. MORGAN:</p> <p>14 Q. You don't have a complaint about the test and</p> <p>15 the way it was graded or the way the scores came</p> <p>16 out. You just complained that you weren't</p> <p>17 allowed to go through the whole process?</p> <p>18 MR. HORSLEY: Object to the form.</p> <p>19 A. Yes, sir.</p> <p>20 MR. HORSLEY: I'm objecting to the</p> <p>21 form because he has already</p> <p>22 testified about problems that he</p> <p>23 did have with the test itself and</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. So just to be clear, your only complaint with</p> <p>2 the test; that is, whether it tested stuff you</p> <p>3 were supposed to do, disparate impact -- your</p> <p>4 only complaint with the test is the 70 cutoff</p> <p>5 score; otherwise, you're happy with the test?</p> <p>6 MR. HORSLEY: Object to the form.</p> <p>7 A. Yes, sir.</p> <p>8 ADDITIONAL EXAMINATION OF MR. STEPHENS</p> <p>9 BY MR. HANCOCK:</p> <p>10 Q. Mr. Stephens, you've heard the questions that</p> <p>11 Mr. Morgan and I have asked Mr. Ogletree. Do</p> <p>12 you agree -- Is your testimony and your position</p> <p>13 in this lawsuit and the claims you bring the</p> <p>14 same that Mr. Ogletree has just testified to?</p> <p>15 A. Yes, sir --</p> <p>16 MR. MORGAN: Object to the form.</p> <p>17 A. -- it is the same.</p> <p>18 Q. You don't have a complaint about the test</p> <p>19 itself; it's the City's policy of not using</p> <p>20 additional factors in the ultimate decision as</p> <p>21 to who would be promoted to battalion chief; is</p> <p>22 that correct?</p> <p>23 MR. MORGAN: Object to the form.</p>



<p style="text-align: right;">Page 189</p> <p>1 A. Yes, sir.</p> <p>2 MR. HANCOCK: Nothing else.</p> <p>3 EXAMINATION</p> <p>4 BY MR. MORGAN:</p> <p>5 Q. Just to be clear, you do not make any claim in</p> <p>6 this lawsuit that the test itself, the written</p> <p>7 test, has a disparate impact; is that true?</p> <p>8 MR. HORSLEY: Object to the form.</p> <p>9 That's a legal question.</p> <p>10 Q. Well, do you claim or don't claim that the</p> <p>11 written test has a disparate impact?</p> <p>12 MR. HORSLEY: Object to the form.</p> <p>13 Q. Do you know one way or the other?</p> <p>14 A. I don't know one way or the other, Mr. Morgan.</p> <p>15 Q. Do you claim in this lawsuit -- Wait a minute.</p> <p>16 Let me rephrase.</p> <p>17 Do you agree that the test -- the written</p> <p>18 test is job related and tests those factors that</p> <p>19 are important for a battalion chief with the</p> <p>20 City of Auburn Fire Department?</p> <p>21 MR. HORSLEY: Object to the form. You</p> <p>22 can answer.</p> <p>23 A. Again, Mr. Morgan, I'm not a expert. Your</p>	<p style="text-align: right;">Page 191</p> <p>1 Plaintiffs,</p> <p>2 Vs.</p> <p>3 CITY OF AUBURN, a municipality</p> <p>4 in the State of Alabama, LARRY</p> <p>5 LANGLEY, and individual, LEE LAMAR,</p> <p>6 an individual, BILL HAM, JR., an</p> <p>7 individual, STEVEN A. REEVES, an</p> <p>8 individual, BILL JAMES, an</p> <p>9 individual, CHARLES M. DUGGAN, an</p> <p>10 individual, and CORTEZ LAWRENCE,</p> <p>11 an individual,</p> <p>12 Defendants.</p> <p>13 In The U.S. District Court</p> <p>14 For the Middle District of Alabama</p> <p>15 Eastern Division</p> <p>16 3:07-CV-867-WKW</p> <p>17 on Friday, June 6, 2008.</p> <p>18 The foregoing 190 computer printed pages</p> <p>19 contain a true and correct transcript of the examination</p> <p>20 of said witness by counsel for the parties set out</p> <p>21 herein. The reading and signing of same is hereby</p> <p>22 waived.</p> <p>23 I further certify that I am neither of kin nor</p>
<p style="text-align: right;">Page 190</p> <p>1 question, related to the field of fire</p> <p>2 profession, but I don't necessarily think it</p> <p>3 applies to the way we do things in Auburn.</p> <p>4 MR. MORGAN: I don't have anything</p> <p>5 else.</p> <p>6 (Deposition concluded at approximately</p> <p>7 1:05 p.m.)</p> <p>8 *****</p> <p>9 FURTHER DEPONENT SAITH NOT</p> <p>10 *****</p> <p>11</p> <p>12 REPORTER'S CERTIFICATE</p> <p>13 STATE OF ALABAMA:</p> <p>14 MONTGOMERY COUNTY:</p> <p>15 I, Pamela A. Wilbanks, CCR, Registered</p> <p>16 Professional Reporter, and Commissioner for the State of</p> <p>17 Alabama at Large, do hereby certify that I reported the</p> <p>18 deposition of:</p> <p>19 EDDIE OGLETREE</p> <p>20 who was first duly sworn by me to speak the truth, the</p> <p>21 whole truth and nothing but the truth, in the matter of:</p> <p>22 EDDIE OGLETREE, an individual,</p> <p>23 GERALD STEPHENS, an</p>	<p style="text-align: right;">Page 192</p> <p>1 of counsel to the parties to said cause nor in any</p> <p>2 manner interested in the results thereof.</p> <p>3 This 17 day of June 2008.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>Pamela A. Wilbanks, ACCR #334 Expiration Date: 9-30-2008 Registered Professional Reporter and Commissioner for the State of Alabama at Large</p>

**DEPOSITION TESTIMONY OF  
GERALD STEPHENS**

**DEPOSITION OF GERALD STEPHENS**

**May 30, 2008**

**Pages 1 through 251**

**PREPARED BY:**

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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,  
Plaintiffs,

Vs. CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in The State of Alabama, LARRY  
LANGLEY, and individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants.

\*\*\*\*\*

DEPOSITION OF GERALD STEPHENS, taken pursuant

to stipulation and agreement before Pamela A. Wilbanks,

Certified Court Reporter, ACCR# 391, Registered

Professional Reporter and Commissioner for the State of

Alabama at Large, in the Law Offices of Hill, Hill,

Carter, Franco, Cole & Black, 425 South Perry Street,

Montgomery, Alabama, on Friday, May 30, 2008, commencing

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APPEARANCES

FOR THE PLAINTIFFS:

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FOR CWH:

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ADAMS & REESE  
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2100 Third Avenue North  
Birmingham, AL 35203

ALSO PRESENT:

Mr. Eddie Ogletree  
Mr. Steven Reeves  
Mr. Lee Lamar

\*\*\*\*\*

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STIPULATION

It is hereby stipulated and agreed by and  
between counsel representing the parties that the  
deposition of GERALD STEPHENS is taken pursuant to the  
Federal Rules of Civil Procedure and that said  
deposition may be taken before Pamela A. Wilbanks,  
Registered Professional Reporter and Commissioner for  
the State of Alabama at Large, without the formality of  
a commission, that objections to questions other than  
objections as to the form of the question need not be  
made at this time but may be reserved for a ruling at  
such time as the said deposition may be offered in  
evidence or used for any other purpose by either party  
provided for by the Statute.

It is further stipulated and agreed by and  
between counsel representing the parties in this case  
that the filing of said deposition is hereby waived and  
may be introduced at the trial of this case or used in  
any other manner by either party hereto provided for by  
the Statute regardless of the waiving of the filing of  
the same.

It is further stipulated and agreed by and  
between the parties hereto and the witness that the

Page 5	Page 7
<p>1 signature of the witness to this deposition is hereby 2 waived. 3 ..... 4 5 GERALD STEPHENS 6 7 The witness, after having first been duly sworn 8 to speak the truth, the whole truth and nothing but the 9 truth testified as follows: 10 11 EXAMINATION 12 BY MR. MORGAN: 13 Q. State your name, please. 14 A. My name is Gerald Stephens. 15 Q. And Mr. Stephens, where do you live? 16 A. I live in Auburn, Alabama. 17 Q. What is your address? 18 A. My address is 828 Cahaba Drive, Auburn, Alabama 19 36830. 20 Q. And who do you live with there? 21 A. I live with my wife and my son. 22 Q. What is your wife's name? 23 A. My wife name is Richetta, R-I-C-H-E-T-T-A. Q. And your son's name?</p>	<p>1 Q. Where does she work? 2 A. Last I recall she works at Lambert Child Care of 3 Auburn. 4 Q. This case is in federal court, and I guess 5 probably the easiest thing would be to send some 6 interrogatories. But I'm going to ask you if 7 you've got any relatives in any of these 8 counties. 9 Do you have any relatives by blood or 10 marriage in Lee County? 11 A. Yes, sir, I do. 12 Q. How about Chambers County? 13 A. No, sir. 14 Q. Macon County? 15 A. No, sir. 16 Q. Randolph County? 17 A. No, sir. 18 Q. Russell County? 19 A. No, sir. 20 Q. Tallapoosa County? 21 A. No, sir. 22 Q. How many relatives do you have in Lee County? 23 A. Several.</p>
Page 6	Page 8
<p>1 Q. Richetta, where does she work? 2 A. Richetta works with Media General, which is a 3 company that oversees the Opelika-Auburn News of 4 Opelika. 5 Q. And how old is your son Jameson? 6 A. My son Jameson is four years old. 7 Q. Do you have any ex-wives? 8 A. No, sir, I don't. 9 Q. Got any other children? 10 A. Yes, sir, I do. 11 Q. And their names and ages? 12 A. I have one daughter. She's 17 years old. Her 13 name is Tarnesha, T-A-R-N-E-S-H-A. 14 Q. And where does she live? 15 A. She also lives in Auburn. 16 Q. Does she attend high school there? 17 A. Yes, sir, she does. 18 Q. Which high school? 19 A. Auburn High School. 20 Q. Who is her mother? 21 A. Her mother name is Tasha Smith. 22 Q. Where does Tasha live? 23 A. She also lives in Auburn.</p>	<p>1 Q. Let me just send an interrogatory. 2 Are your parents still living? 3 A. My mother is. My father is deceased. 4 Q. Where does your mother work, if she does? 5 A. My mother is retired. 6 Q. From where? 7 A. She was in child care. She worked in several 8 different places. The last place she worked was 9 First Baptist Church. 10 Q. And what is her name? 11 A. Dorothy Stephens. 12 Q. And your father's name? 13 A. James. 14 Q. And where was his last employment? 15 A. Post Office of Auburn, Alabama. U.S. Postal 16 Service. 17 Q. Do you have any brothers? 18 A. I do. 19 Q. That live in Lee County? 20 A. Yes, sir. 21 Q. How many? 22 A. I have two brothers -- three brothers -- I'm 23 sorry -- that live in Lee County.</p>

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1 Q. Just give me their names.  
 2 A. Terry Byrd. B-Y-R-D, last name. Russell Byrd  
 3 and Clemmon Byrd.  
 4 Q. Where does Terry work?  
 5 A. He's disabled at this time. He doesn't work  
 6 anymore.  
 7 Q. Russell?  
 8 A. He's disabled as well.  
 9 Q. And Clemmon?  
 10 A. Clemmon is a police officer of the City of  
 11 Auburn, police division.  
 12 Q. And are they married?  
 13 A. Clemmon is.  
 14 Q. What's his wife's name?  
 15 A. Allison.  
 16 Q. Where does she work?  
 17 A. I think she works with Mental Health of Lee  
 18 County, if I'm not mistaken.  
 19 Q. What's her maiden name?  
 20 A. I'm not really sure about that, Mr. Morgan.  
 21 Q. Got any sisters?  
 22 A. I do.  
 23 Q. How many sisters?

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1 A. One sister.  
 2 Q. And her name is ...  
 3 A. Cassandra Stephens Pitts.  
 4 Q. Where does she work?  
 5 A. She works in Montgomery.  
 6 Q. What does she do over here?  
 7 A. She works with the IRS Department of the State.  
 8 Q. And her husband's name, if she has one?  
 9 A. She's divorced, but her ex-husband name is  
 10 Robert Pitts.  
 11 Q. And where does he live and work?  
 12 A. He works in Opelika. He lives in Auburn.  
 13 Q. What does he do in Opelika?  
 14 A. He works at the UniRoyal Plant.  
 15 Q. Are you a member or do you regularly attend a  
 16 church?  
 17 A. Yes, sir, I do.  
 18 Q. What is that church?  
 19 A. My church home is Ebenezer Baptist Church of  
 20 Auburn.  
 21 Q. Do you attend another church?  
 22 A. Mr. Morgan, I attend several churches in the  
 23 City of Auburn. I attend my wife's church,

Page 11

1 which is St. Luke CME, also of Auburn.  
 2 Q. Okay.  
 3 A. I attend Auburn United Methodist Church, which  
 4 is also of Auburn. And I also attend Greater  
 5 Peace Baptist Church, which is in Opelika,  
 6 Alabama.  
 7 Q. But you are officially a member of Ebenezer?  
 8 A. Yes, sir.  
 9 Q. And I assume you attend St. Luke's because your  
 10 wife goes there?  
 11 A. Yes, sir. Wife and son.  
 12 Q. What about these other two: Auburn United  
 13 Methodist and Greater Peace?  
 14 A. Those are just neighboring churches in the  
 15 community that I'm affiliated with the people  
 16 that go there and the ministers. So I attend  
 17 them on a regular basis.  
 18 Q. Do you hold any position in any of these  
 19 churches?  
 20 A. No, sir.  
 21 Q. Deacon or anything like that?  
 22 A. No, sir.  
 23 Q. Are you a member of any clubs, civic, social --

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1 A. I am a member -- I'm sorry.  
 2 Q. -- political organizations in Lee County or any  
 3 of these other counties?  
 4 A. I am a member of an organization by the name of  
 5 People of Action for Community Enrichment. The  
 6 icon on that is PACE, and it is of Lee County.  
 7 Q. What kind of group is that? What do they do?  
 8 A. It's a social communication where we implement  
 9 youth development and educational skills. We  
 10 oversee our organization, which is a reading  
 11 club, to induce basically educational skills for  
 12 growing youth.  
 13 Q. Is that a mixed race group?  
 14 A. Yes, sir, it is.  
 15 Q. Where is it located? Does it have an address?  
 16 A. We meet monthly in Opelika. We don't have a  
 17 general area where we consider to be a part of.  
 18 Q. Are there any other Auburn firefighters that are  
 19 members of that club?  
 20 A. No, sir, not that I'm aware of.  
 21 Q. Are you a member of the NAACP?  
 22 A. No, sir.  
 23 Q. Have we covered all your clubs, civic, political

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<p>1 organizations?</p> <p>2 A. (Witness nods head positively.)</p> <p>3 Q. Any others?</p> <p>4 A. Not that I'm aware of at this time, sir.</p> <p>5 Q. Or any that you've been a member of, say, within</p> <p>6 the last five years that you're no longer a</p> <p>7 member of?</p> <p>8 A. I am a part of a Masonic organization, if that</p> <p>9 would apply to it or whatever.</p> <p>10 Q. Okay. Where is it located?</p> <p>11 A. Auburn.</p> <p>12 Q. What's the name of it?</p> <p>13 A. Milton W. Howze, H-O-W-Z-E. Lodge Number 408.</p> <p>14 Q. And what does that organization do?</p> <p>15 A. Community involvement as far as -- Basically</p> <p>16 what we do is just help out in the community,</p> <p>17 help local businesses, fundraisers, anything</p> <p>18 that pretty much enhances the community.</p> <p>19 Q. Have you, other than this lawsuit, been a</p> <p>20 plaintiff, sued anyone else, other than this</p> <p>21 lawsuit?</p> <p>22 A. No, sir, not that I can recall.</p> <p>23 Q. Have you ever been sued by anybody?</p>	<p>1 A. No, sir.</p> <p>2 Q. Tell me about your educational background.</p> <p>3 You're a high school graduate?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Where did you graduate from?</p> <p>6 A. Auburn High School.</p> <p>7 Q. What year?</p> <p>8 A. 1990.</p> <p>9 Q. Have you attended college or junior colleges?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Where have you been?</p> <p>12 A. Auburn University.</p> <p>13 Q. What year did you start?</p> <p>14 A. 1990.</p> <p>15 Q. And did you complete it?</p> <p>16 A. No, sir. 1992. I did two years at Auburn</p> <p>17 University.</p> <p>18 Q. What was your course of study?</p> <p>19 A. Business.</p> <p>20 Q. And what was the reason why you did not complete</p> <p>21 it?</p> <p>22 A. I had a child at the time, and I needed to work.</p> <p>23 Q. Did you have any academic problems?</p>
Page 14	Page 16
<p>1 A. No, sir.</p> <p>2 Q. Ever been in bankruptcy?</p> <p>3 A. No, sir.</p> <p>4 Q. Have you ever had any judgments against you for</p> <p>5 anything?</p> <p>6 A. In reference to -- Just in particular?</p> <p>7 Q. Anything. Loans, collections --</p> <p>8 A. No, sir.</p> <p>9 Q. -- cases? Anything?</p> <p>10 A. No, sir.</p> <p>11 Q. Have you ever been arrested?</p> <p>12 A. In my early years, yes, sir.</p> <p>13 Q. What for?</p> <p>14 A. I had a driving violation, 16 years old.</p> <p>15 Q. Like a speeding ticket?</p> <p>16 A. DUI.</p> <p>17 Q. Anything else?</p> <p>18 A. Other than speeding tickets. From that point</p> <p>19 on, no, sir.</p> <p>20 Q. And any convictions? Were you convicted of the</p> <p>21 DUI?</p> <p>22 A. Yes, sir, I was.</p> <p>23 Q. Any other convictions other than that?</p>	<p>1 A. No, sir.</p> <p>2 Q. Any other formal education?</p> <p>3 A. Yes, sir. I attended several junior colleges:</p> <p>4 Southern Union, Chattahoochee Valley State</p> <p>5 Community College, Shelton State Community</p> <p>6 College, Alabama State Fire College.</p> <p>7 Q. Is that at Shelton State or is that separate?</p> <p>8 A. Yes, sir. That's through Shelton State in</p> <p>9 Tuscaloosa.</p> <p>10 Q. In terms of Southern Union, did you receive a</p> <p>11 diploma, certificate or anything from that or</p> <p>12 were you attending courses related to your fire</p> <p>13 work?</p> <p>14 A. Courses related to my fire work.</p> <p>15 Q. And how about Chattahoochee Valley? Same thing?</p> <p>16 A. Courses related to my fire work.</p> <p>17 Q. Shelton State?</p> <p>18 A. Yes, sir. Courses related to my fire work.</p> <p>19 Q. And the Alabama Fire College, is that something</p> <p>20 that all firefighters attend or do you have to</p> <p>21 be selected to attend the Alabama Fire College?</p> <p>22 How does that work at Auburn?</p> <p>23 A. As far as I've been working there, it was an</p>



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1 opportunity for firefighters to go and to better  
 2 enhance themselves as far as the fire  
 3 professional field and career.  
 4 Q. Do you have to attend the Alabama Fire College  
 5 as an employee of Auburn Fire Department?  
 6 A. Yes, sir, I do.  
 7 Q. So all firefighters, once they are hired and  
 8 become, I guess, non-probationary, they have to  
 9 attend the fire college?  
 10 A. Yes, sir. In order to be employed with the  
 11 Auburn Fire Division, to my understanding you  
 12 must undergo several weeks of training which  
 13 comes from the State Fire College through  
 14 certifications and all that.  
 15 Q. Now, are there state-required minimum standards  
 16 for firefighters before you can be hired?  
 17 A. Before?  
 18 Q. Yes. Or as part of your hiring process.  
 19 A. Not before, no. And I'm only speaking from my  
 20 experience. When I was hired I underwent  
 21 educational and physical training through the  
 22 State Fire College at that point. It was not  
 23 prior to.

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1 Q. Okay. In order to be certified in the state of  
 2 Alabama as a firefighter, do you have to  
 3 complete certain things?  
 4 A. Yes, sir.  
 5 Q. And what do those include?  
 6 A. I had to complete Firefighter I certification.  
 7 Q. And where did you do that?  
 8 A. The training was conducted in Lee County at the  
 9 Opelika training grounds through my employer.  
 10 Q. Are you a veteran?  
 11 A. No, sir.  
 12 Q. No time in the military?  
 13 A. No, sir.  
 14 Q. When were you first employed with the City of  
 15 Auburn?  
 16 A. I was first employed in 1991.  
 17 Q. Now, were you a student firefighter?  
 18 A. Yes, sir, I was.  
 19 Q. And tell me what you had to do to be a student  
 20 firefighter.  
 21 A. Of course, I had to submit an application. And  
 22 once selected I had to undergo several weeks of  
 23 training, what they consider to be a rookie

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1 school.  
 2 Q. Who would be your supervisor when you were a  
 3 student firefighter?  
 4 A. My immediate supervisor was a team leader.  
 5 Q. Do you remember who?  
 6 A. If I'm thinking correctly, my first team leader  
 7 was by the name of Ronald Blankenship.  
 8 Q. And how long did you remain a student  
 9 firefighter?  
 10 A. Three years.  
 11 Q. That would have been up till about '94?  
 12 A. Yes, sir.  
 13 Q. And then you became a ...  
 14 A. Career firefighter, yes, sir.  
 15 Q. If you left Auburn in -- the university in '92,  
 16 how did you remain a student firefighter up  
 17 through '94?  
 18 A. I went to Auburn University for two years, and  
 19 then after that I started taking courses through  
 20 the junior colleges.  
 21 Q. Academic courses or fire-related courses?  
 22 A. Both.  
 23 Q. What junior colleges did you take academic

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1 courses in?  
 2 A. Southern Union and Chattahoochee Valley.  
 3 Q. Did you receive a certificate or diploma or  
 4 complete the coursework academically at either  
 5 Southern Union or Chattahoochee?  
 6 A. I have my grades and records to show that I  
 7 attended those, but certification-wise, not  
 8 during that period of time.  
 9 Q. What I'm asking is -- Usually, I guess, if you  
 10 go two years, you get some sort of certificate  
 11 at the end: I've completed this course of study  
 12 at a junior college. Did you ever achieve that  
 13 from either Southern Union or Chattahoochee?  
 14 A. No, sir.  
 15 Q. But that allowed you to stay on as a student  
 16 firefighter?  
 17 A. Yes, sir.  
 18 Q. What did you do to become a regular firefighter?  
 19 A. I submitted an application.  
 20 Q. And I assume you were hired?  
 21 A. Yes, sir.  
 22 Q. According to my notes, I've got that you were  
 23 hired January 17, 1994. Is that about right?

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<p>1 A. That was my first day on shift. I was</p> <p>2 actually -- According to my state retirement</p> <p>3 records and all that, I officially started</p> <p>4 January 1st.</p> <p>5 Q. Of '94?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Speaking of retirement, do you get time credited</p> <p>8 on your retirement for the period when you were</p> <p>9 a student firefighter?</p> <p>10 A. I didn't ever get any, no, sir.</p> <p>11 Q. Do they do that now?</p> <p>12 A. Yes, sir.</p> <p>13 Q. So did they go back and pick up your three</p> <p>14 years?</p> <p>15 A. Well, I was given an opportunity to do that, but</p> <p>16 I didn't.</p> <p>17 Q. You would have had to have pay in, I guess?</p> <p>18 A. Yes, sir.</p> <p>19 Q. We talked about training, going to the Alabama</p> <p>20 Fire College and the Firefighter I training you</p> <p>21 received in Lee County. Did you have to undergo</p> <p>22 any additional training to be a career</p> <p>23 firefighter from what you had already received</p>	<p>1 a career firefighter in '94, did you have any</p> <p>2 other employments?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Where else were you employed?</p> <p>5 A. I had several. I worked with Lamar Lawn Care,</p> <p>6 and that's of Auburn. I worked at JJ Raceway,</p> <p>7 which is a convenience store/gas station, and</p> <p>8 that's of Auburn. I worked at Wal-Mart</p> <p>9 Supercenter, and that was in Opelika, Alabama.</p> <p>10 I'm trying to think. Two years ago I started my</p> <p>11 own business as a lawn care and landscaping</p> <p>12 service business, and I've been doing that for</p> <p>13 two years. I think I touched them all. I</p> <p>14 think.</p> <p>15 Q. Now, I'm aware of two EEOC charges which you</p> <p>16 filed.</p> <p>17 A. Yes, sir.</p> <p>18 Q. The one about the battalion chief and promotion,</p> <p>19 and then one several years earlier that I think</p> <p>20 had to do with the Horace Clanton assignment.</p> <p>21 Have you filed any other EEOC charges other</p> <p>22 than those two? Not just the City of Auburn but</p> <p>23 anybody. Any other, other than those two EEOC</p>
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<p>1 as a student firefighter?</p> <p>2 A. Yes, sir. I underwent a lot of training that</p> <p>3 was basically voluntary that I chose to pursue</p> <p>4 on my own.</p> <p>5 Q. Let me back up.</p> <p>6 As a requirement -- I assume when you were</p> <p>7 hired as a student firefighter, you had to have</p> <p>8 fire training just like anybody else.</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did you have to have any additional required</p> <p>11 training when you made the transition from</p> <p>12 student to career?</p> <p>13 A. Yes, sir. I had to -- Within a year I had to</p> <p>14 pass a course or certification of Firefighter</p> <p>15 II. And I can't remember how many years later,</p> <p>16 but I was required to pass an apparatus operator</p> <p>17 certification.</p> <p>18 Q. And I assume you did all that without any</p> <p>19 problem?</p> <p>20 A. Yes, sir. No problems.</p> <p>21 Q. Other than the fire department or fire division</p> <p>22 with City of Auburn, have you had -- between</p> <p>23 high school and becoming a career -- what I call</p>	<p>1 charges?</p> <p>2 A. No, sir, I haven't. Other than the two you've</p> <p>3 spoken of.</p> <p>4 Q. And in the grievances, I'm aware that you filed</p> <p>5 a grievance after the battalion chief promotion</p> <p>6 procedure. Have you filed any other grievances</p> <p>7 with the City of Auburn?</p> <p>8 A. I have initiated grievances, but I've never</p> <p>9 completed them. Well, I didn't complete those</p> <p>10 that were initiated. After going through the</p> <p>11 procedures that are in place with the City, it</p> <p>12 was handled through the process.</p> <p>13 Q. Let me get a list of those. The battalion</p> <p>14 chief -- The grievance related to the battalion</p> <p>15 chief promotion, you completed that process?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What grievances have you filed that you</p> <p>18 didn't -- Let me back up. I want to be clear.</p> <p>19 That's the only grievance procedure that</p> <p>20 you've completed?</p> <p>21 A. It was two grievance procedures I completed.</p> <p>22 One was in 2005 where I went -- where I</p> <p>23 underwent all the procedures of the City and</p>

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1 actually had a hearing. And that was in 2005  
 2 where I was pretty much on my -- alone on that  
 3 grievance and pursued all procedures in  
 4 reference to.  
 5 Q. What was the 2005 one about?  
 6 A. That one was about -- That was when Mr. Horace  
 7 Clanton was assigned as acting battalion chief  
 8 in the presence of our official battalion chief  
 9 who had health issues at the time.  
 10 Q. You actually had a hearing on it?  
 11 A. Yes, sir.  
 12 Q. Who was the hearing officer?  
 13 A. The city Judge, Judge Joe Bailey.  
 14 Q. Just briefly, what was the outcome of his --  
 15 A. That I can recall, basically they stated that  
 16 they didn't find anything in reference to me  
 17 having a grievance or any grounds in reference  
 18 to my complaint that I was applying on the City.  
 19 Q. Were you the only person involved in that  
 20 grievance?  
 21 A. Yes, sir.  
 22 Q. And is that the same incident or scenario that  
 23 led to the EEOC charge?

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1 A. The first one.  
 2 Q. Yes, sir.  
 3 A. Yes, sir.  
 4 Q. And did you receive a right to sue letter on  
 5 that first EEOC charge involving Mr. Clanton?  
 6 A. From the attorney firm that I had at that time,  
 7 yes, I did receive one.  
 8 Q. You had a law firm representing you at that  
 9 time?  
 10 A. I had a law firm I was consulting with, yes.  
 11 Q. Who were they?  
 12 A. Brooks Law Firm of Birmingham, Alabama.  
 13 Q. But my understanding is you did not file a  
 14 lawsuit as a result of that EEOC complaint; is  
 15 that true?  
 16 A. No, sir.  
 17 Q. No, sir, you --  
 18 A. No, I didn't.  
 19 Q. It's true you did not file a complaint?  
 20 A. I filed a complaint and went all the way through  
 21 the hearing and to the point where I got the  
 22 right to sue letter, but after --  
 23 MR. HORSLEY: He's talking about a

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1 lawsuit.  
 2 Q. You didn't file a lawsuit as a result of that?  
 3 A. No, sir.  
 4 Q. So you didn't file a lawsuit as a result of  
 5 either that EEOC charge or grievance?  
 6 A. No, sir.  
 7 Q. Tell me what other grievances that you filed  
 8 with the City that you didn't complete the  
 9 process.  
 10 A. Past and present?  
 11 Q. Yeah. All of them.  
 12 A. All of them. Okay.  
 13 Q. Well, let me back up. I want all of them, but  
 14 if you have any present ones that are still  
 15 pending, I'm going to put them in a different  
 16 category.  
 17 A. Okay.  
 18 Q. Do you have any grievances that are still  
 19 pending?  
 20 A. No, sir.  
 21 Q. So all --  
 22 A. Present day, no, sir.  
 23 Q. So all the grievances that you're about to tell

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1 me about you filed but did not complete the  
 2 process?  
 3 A. I didn't go through the whole process where a  
 4 hearing was involved.  
 5 Q. Okay. Tell me about those grievances. And if  
 6 you can, start at your earliest one that you can  
 7 remember.  
 8 A. If I'm thinking correctly, the first one I ever  
 9 filed was in 2001, and that was filed on my  
 10 immediate supervisor, Melvin Dean Garrett.  
 11 Q. Just tell me what was the nature of the  
 12 grievance.  
 13 A. Basically I was being labeled as a problem from  
 14 my immediate supervisor and coworkers, and I  
 15 thought I was being treated unfairly. So I  
 16 underwent the grievance procedures of the City.  
 17 Q. And how was that resolved?  
 18 A. Basically it was resolved when we got to the  
 19 acting fire chief at the time, Mr. Larry  
 20 Langley.  
 21 Q. And how did Mr. Langley resolve it?  
 22 A. Basically the problem was confronted at hand,  
 23 and to make a long story short, we left the room

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<p>1 with an understanding that the problem wouldn't 2 happen again.</p> <p>3 Q. And did that work out to your satisfaction?</p> <p>4 A. For a little bit of time it did, yes, sir.</p> <p>5 Q. What was there about being labeled a problem 6 that you considered being unfair treatment?</p> <p>7 A. Well, there was a lot of things going on on 8 shift whereas it was presented to me that people 9 had problems working for me, working with me, 10 or, better yet, just saying overall that I 11 wanted things done my way, of that nature, 12 whereas I was doing basically what I was told or 13 advised to do through my immediate supervisor, 14 who was Captain Garrett at the time.</p> <p>15 Q. Now, you were a lieutenant then?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And you would have reported to Captain Garrett?</p> <p>18 A. Yes, sir. That's my immediate supervisor.</p> <p>19 Q. What location was this?</p> <p>20 A. This happened at Station 1.</p> <p>21 Q. And I want to be clear. Would the captain have 22 been the highest ranking officer at Station 1 at 23 that time?</p>	<p>1 requested that it stop. And we left his office 2 with the understanding that it would.</p> <p>3 Q. And did it work out?</p> <p>4 A. For a little -- short period of time, yes.</p> <p>5 Q. And when is your next grievance?</p> <p>6 A. I'm trying to get them in order here. I 7 initiated a grievance -- I don't recall the 8 date. I initiated a grievance in reference to 9 my evaluation. And basically that was about the 10 fact that my evaluation was due at a certain 11 time, and it wasn't according to the rules in 12 place.</p> <p>13 Q. Wasn't timely completed?</p> <p>14 A. No, sir, it wasn't timely.</p> <p>15 Q. And who was the person that was supposed to 16 evaluate you?</p> <p>17 A. I don't recall that, Mr. Morgan. I'm sorry.</p> <p>18 Q. How was that --</p> <p>19 A. I received my evaluation. It was late but I 20 received it.</p> <p>21 Q. Did you have to go any further than just 22 initiating a grievance? Did you meet with Larry 23 Langley or --</p>
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<p>1 A. Captain Garrett was the shift commander for that 2 shift. And if I'm thinking correctly, that 3 was -- I want to say it was A shift, but 4 don't -- I don't actually recall the actual 5 shift. But he was the shift commander.</p> <p>6 Q. And would y'all have both been on the same shift 7 at the same time?</p> <p>8 A. Yes, sir. Same station.</p> <p>9 Q. When is the next grievance that you recall?</p> <p>10 A. The next one was on -- was when I changed 11 shifts. I went through a shift change and 12 received another immediate supervisor by the 13 name of Danny Leverette.</p> <p>14 Q. Just generally what was the nature of that 15 complaint?</p> <p>16 A. It was basically a problem from the previous 17 grievance I filed where it carried over, and the 18 same things pretty much started happening again.</p> <p>19 Q. You were labeled a problem?</p> <p>20 A. Yes, sir.</p> <p>21 Q. How was that resolved?</p> <p>22 A. Same procedures. Underwent the procedures and 23 got to Mr. Langley's office again, and I</p>	<p>1 A. No, sir. I pretty much presented it to my 2 immediate supervisor. What he did, I don't 3 know, but I received my evaluation immediately.</p> <p>4 Q. Any other grievances you filed?</p> <p>5 A. I've had to do that twice. I had to file a 6 grievance twice on that, evaluation purposes.</p> <p>7 Q. Okay.</p> <p>8 A. For the same reasons.</p> <p>9 Q. And I assume it was the same result on each one 10 of them?</p> <p>11 A. Yes, sir.</p> <p>12 Q. You talked to your superior officer, and the 13 next thing is you get your evaluation?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Any other grievances?</p> <p>16 A. If I'm thinking correctly, the next one was when 17 I was assigned to Station 5. I'm sorry. I'm 18 sorry. Back up.</p> <p>19 I started a grievance about an incident that 20 happened on the fire scene over a fire call that 21 involved Mr. Larry Langley. And my immediate 22 supervisor at that time was the late Jimmy 23 Brown, who is deceased at this time.</p>

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1 Q. What rank was Langley at the time?  
2 A. Langley was acting fire chief.  
3 Q. Just briefly tell me what happened.  
4 A. Basically what happened on that incident was we  
5 was on an actual working structure fire, fire  
6 call, that day. Captain Brown at the time was  
7 not working. The acting supervisor was Dennis  
8 Carlisles. And during the process of working  
9 that structure fire, Mr. Langley arrived on the  
10 scene. And from what I saw, he was in the way.  
11 He didn't have on his proper equipment, and we  
12 was trying to work. And basically I asked him  
13 to remove himself from what we considered to be  
14 the hot zone of the fire scene. And the remark  
15 he gave me back was something I probably  
16 shouldn't say.  
17 Q. You can say it. We've probably all heard  
18 something similar.  
19 A. Well, to the best of my knowledge, he told me,  
20 I'm the damn fire chief; I do what I want to do;  
21 you just get to work. Not in those exact  
22 words.  
23 So at that point I asked -- I went to the

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1 immediate supervisor, Mr. Carlisles, and asked  
2 him could he remove him from the fire scene so  
3 we could do our work. And the response  
4 Mr. Carlisles gave me at that time was, I told  
5 him, and he basically told me he was the fire  
6 chief and he do what he want to do.  
7 So we worked through that and put the fire  
8 out. And after the fire when we returned to the  
9 station, it was a called meeting for the  
10 personnel on shift who actually fought the  
11 fire. And in this meeting, again Mr. Langley  
12 became very irate with me in front of everybody  
13 who was present. And at that point I considered  
14 things to be totally out of hand so I sat down,  
15 and I just didn't say anything else until  
16 everybody left. And when everybody did leave,  
17 to make a long story short, I told him that I  
18 would not accept that type of behavior and I  
19 just wasn't going to tolerate it.  
20 So therefore I wrote a letter to my  
21 immediate supervisor, who -- when he came back  
22 to work. Explained it to him, what happened.  
23 And his response basically was, this is

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1 something that always happens at the fire scene;  
2 you should be used to this by now; deal with  
3 it. And being that I got that response, I  
4 decided not to do anything at that point but to  
5 just have that documented and in my presence.  
6 Q. Any other grievances?  
7 A. I think the next one was when I was assigned to  
8 Station 5, the new station that was recently  
9 built or the last station that was recently  
10 built, the fire station that was built in  
11 Auburn.  
12 Q. Tell me about that one.  
13 A. This particular grievance involved an incident  
14 where a young man was -- I'm trying to think of  
15 a good word. He was violated and he chose to  
16 pursue it.  
17 Q. Who is this?  
18 A. His name was Paden Payton.  
19 Q. Pagan?  
20 A. Paden Payton.  
21 Q. P-A-D-E-N?  
22 A. Payton Paden. I'm sorry. P-A-Y-T-O-N  
23 P-A-D-E-N.

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1 Q. How was he violated?  
2 A. It was one of those situations where you're new  
3 on the shift, and this is our way of initiating  
4 you in sort of speaking, something that happens  
5 or has happened at the fire station. But this  
6 particular time when it happened, he felt  
7 violated and he came to me.  
8 Q. Can you tell me what it was that was done to him  
9 or that he relayed to you?  
10 A. From what I was told and from what I observed  
11 when it was presented to me, he was severely wet  
12 down with water and covered with food product,  
13 duck-taped, et cetera, et cetera, to the point  
14 where -- He told me in the beginning it was  
15 against his will. Like I say, Mr. Morgan, I  
16 didn't see it. It was brought to me after the  
17 fact. And when I asked him what did he want me  
18 to do about it in reference to, he said he  
19 wanted me to do something. So the only thing I  
20 knew to do was to follow the procedures that  
21 were in place for the City.  
22 Q. Is he a white male?  
23 A. He is a white male.



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<p>1 Q. Did you file a grievance on his behalf or did he</p> <p>2 file his own grievance?</p> <p>3 A. Well, that's leading to -- everything that was</p> <p>4 done was through me as his immediate</p> <p>5 supervisor. I guess I should just tell you all</p> <p>6 in detail leading to the point where I did what</p> <p>7 I did. Would that be okay?</p> <p>8 Q. Sure.</p> <p>9 A. I presented in writing what I was told by him</p> <p>10 and my guys on my shift to my immediate</p> <p>11 supervisor. From that point I think it went to</p> <p>12 the Public Safety Department, whereas the deputy</p> <p>13 fire chief, acting fire chief, training chief,</p> <p>14 all those superior officers got involved to</p> <p>15 investigate. And to make a long story short, I</p> <p>16 convinced Mr. Paden to the point that we can try</p> <p>17 to resolve this in-house if we possibly can. Of</p> <p>18 course, he can do anything he want. That was</p> <p>19 his choice. But as his immediate supervisor and</p> <p>20 on the behalf of the division, I was trying to</p> <p>21 resolve this in-house and in a progressive</p> <p>22 manner as much as possible. And it was.</p> <p>23 Mr. Paden's request was to remain under my</p>	<p>1 Q. Not even as a young firefighter?</p> <p>2 A. No, sir.</p> <p>3 Q. What's your next grievance that you started but</p> <p>4 didn't complete?</p> <p>5 A. Well, I think the last grievance I started and</p> <p>6 didn't complete was in reference to the incident</p> <p>7 with Mr. Paden whereas I questioned why I was</p> <p>8 being moved from Station 5. And it was with</p> <p>9 Mr. Lamar, who at the time was the deputy chief.</p> <p>10 Q. You went from 5 to where?</p> <p>11 A. I went from 5 to Station 4.</p> <p>12 Q. And did you file a grievance and it went up</p> <p>13 to --</p> <p>14 A. I initiated a grievance, and it stopped at</p> <p>15 Mr. Lamar.</p> <p>16 Q. And how was it resolved?</p> <p>17 A. Basically it was decided between him and my</p> <p>18 immediate supervisor, who was Matthew Jordan.</p> <p>19 What happened was that when I initiated a</p> <p>20 grievance, the response was that Chief Jordan</p> <p>21 was going administratively working Monday</p> <p>22 through Friday and that a new shift commander</p> <p>23 was stepping in by the name of Joey Darby. And,</p>
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<p>1 immediate supervision until he regained his</p> <p>2 confidence. And he did stay with me; that is,</p> <p>3 until I was told to report to another station.</p> <p>4 And when I was told to report to another</p> <p>5 station, I didn't understand why. And, of</p> <p>6 course, when I told Payton that I was advised to</p> <p>7 move to another station, he resigned. And his</p> <p>8 reason for resigning was that he asked to remain</p> <p>9 under my immediate supervision until he regained</p> <p>10 his confidence. Being that they were moving me</p> <p>11 and I wasn't there to be over him, he didn't</p> <p>12 feel confident anymore to even work there and he</p> <p>13 resigned.</p> <p>14 Q. What station was that?</p> <p>15 A. Station 5.</p> <p>16 Q. Is that something that's called hazing?</p> <p>17 A. Yes, sir, that's exactly what it is.</p> <p>18 Q. Did he participate in any hazing himself?</p> <p>19 A. According to the investigation from what I was</p> <p>20 told, they say he did. According to Mr. Paden,</p> <p>21 he say he didn't.</p> <p>22 Q. Have you ever participated in any hazing?</p> <p>23 A. No, sir.</p>	<p>1 of course, that took place, but I was still</p> <p>2 given an opportunity to move back to Station 5</p> <p>3 by Mr. Lamar. And after conversing with my</p> <p>4 immediate supervisor -- present immediate</p> <p>5 supervisor, Mr. Darby, Chief Darby, and through</p> <p>6 agreement with him as my immediate supervisor, I</p> <p>7 chose to remain at Station 4 and just work</p> <p>8 things out from that point.</p> <p>9 Q. Which station was Jordan the shift commander, 4</p> <p>10 or 5?</p> <p>11 A. Chief Jordan was working administrative duties</p> <p>12 as a battalion chief. He was working in the</p> <p>13 public safety building. He was working Monday</p> <p>14 through Friday schedule. He was not assigned --</p> <p>15 Prior to him becoming shift commander, he was</p> <p>16 not assigned to a station.</p> <p>17 Q. Here's why I'm confused. You were at Station 5</p> <p>18 and transferred to Station 4.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did you have any problems with the shift</p> <p>21 commander at Station 5?</p> <p>22 A. No, sir.</p> <p>23 Q. Did you want to leave Station 5?</p>

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1 A. No, sir.  
 2 Q. When you arrived at Station 4, did you have any  
 3 problems with the shift commander?  
 4 A. No, sir.  
 5 Q. You just didn't want to go from 5 to 4?  
 6 A. Basically I was asked to go to Station 5 when it  
 7 opened by Mr. Langley. And I had put in a  
 8 request to go to Station 5 when it was being  
 9 built that I explained to my immediate  
 10 supervisor. So my problem was here I am being  
 11 requested to go and asking to go, and a month  
 12 and a half later or right at almost two months  
 13 I'm being asked to leave. And I wanted to know  
 14 why.  
 15 Q. And did you ask somebody why?  
 16 A. I asked Chief Jordan why.  
 17 Q. What did he say?  
 18 A. The response he gave me was: You're closer to  
 19 home and you don't have to travel so far to get  
 20 to work. And my response to him was: For 14  
 21 years I've never been late for work regardless  
 22 of where the station was and how far I had to  
 23 travel.

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1 Q. But now that you're at -- Are you still at 4?  
 2 A. I'm still at 4.  
 3 Q. And once you got to 4 and you filed your  
 4 grievance, they gave you an opportunity to go  
 5 back to 5 and you elected to stay at 4?  
 6 A. Yes, sir. After speaking with my present  
 7 supervisor.  
 8 Q. Is there some significance in Darby becoming the  
 9 shift commander --  
 10 A. That was not my call. That was somebody else's.  
 11 Q. I mean is there some significance in him being  
 12 shift commander that influenced you to stay at  
 13 4?  
 14 A. Yes, sir.  
 15 Q. And what was that?  
 16 A. Basically Chief Darby was coming on fresh. He  
 17 hadn't made this decision with me. And after  
 18 talking with him and letting him know what I  
 19 thought about the move in general, we just came  
 20 to a conclusion where we worked it out where I  
 21 would stay at 4 and the other guy would remain  
 22 at 5 who actually replaced me when I left.  
 23 Q. And do you agree with me that it is up to the

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1 chief or his administrative assistant to  
 2 determine where firefighters should be assigned?  
 3 A. It's not my decision, Mr. Morgan. As far as I  
 4 know, it is everyone above me -- that's  
 5 battalion chief and up -- who make those  
 6 decisions.  
 7 Q. And do you agree with me they are the ones that  
 8 should make those decisions?  
 9 A. They are in position to make those decisions so  
 10 therefore, I guess, it's their duty to make  
 11 those decisions when the time come.  
 12 Q. Now, you applied for promotion to lieutenant in  
 13 '96?  
 14 A. Yes, sir.  
 15 Q. And you were promoted?  
 16 A. Yes, sir.  
 17 Q. What was the procedure for lieutenant?  
 18 A. At that time?  
 19 Q. Yes, sir.  
 20 A. At that time I underwent an assessment center.  
 21 Q. Explain that to me.  
 22 A. An assessment center consists of a panel of  
 23 assessors, non-affiliated with Auburn Fire

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1 Division or the City of Auburn in general.  
 2 Basically what you have is a panel of officers,  
 3 lieutenant or higher, who would sit through a  
 4 scenario or different scenarios throughout the  
 5 entire procedures. I think the procedures at  
 6 that time lasted a week. And basically what I  
 7 had to do was undergo these scenarios to the  
 8 point where they would take the information  
 9 received and grade me appropriately or  
 10 accordingly. Didn't take a written test. Had  
 11 to be eligible to apply for the position  
 12 basically was the only requirement. And at that  
 13 time, I was eligible to apply; therefore, I did.  
 14 Q. Do you remember what the eligibility  
 15 requirements were?  
 16 A. No, sir, I don't recall. But at the time I know  
 17 I had several certifications: Firefighter I and  
 18 II, Instructor I and II, Fire Officer I and II,  
 19 hazmat technician, apparatus operator, pumper  
 20 certification. Fire Inspector I, I think I had.  
 21 Q. What I was asking actually is: Were there any  
 22 time in grade requirements? Did you have to be  
 23 a permanent firefighter?

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<p>1 A. I was never -- Well, you had to be a career 2 firefighter to apply. 3 Q. Okay. 4 A. But I was not given any pertinent time in 5 reference to applying for this position. 6 Q. So if I became a career firefighter on April 7 1st, I could have taken the promotion procedure 8 for lieutenant on April 5? 9 A. One thing I was told is that I couldn't apply if 10 I was on probation. 11 Q. Okay. 12 A. And I wasn't on probation when I applied. Let 13 me confirm that. 14 Q. How long is your probationary period? 15 A. My probationary period when I became career -- 16 well, when I became a student was one year. My 17 probationary period when I became a career 18 firefighter was one year, and my probationary 19 period when I became a lieutenant was one year. 20 Q. So you had to at least have one year of service 21 as a career firefighter to apply for lieutenant 22 when you applied? 23 A. In reference to me, yes, sir.</p>	<p>1 A. A team leader would be a career -- The way it 2 worked was you had to be a career firefighter to 3 apply for team leader. You couldn't apply for a 4 team leader position that I'm aware of as a 5 student firefighter. You couldn't do it. 6 Q. Student firefighters can't do anything but be 7 student firefighters. 8 A. That's it. 9 MR. HORSLEY: We're still talking 10 1996, right? 11 A. Yes. 12 Q. Yes. I'm just trying to -- 13 A. Yes, sir. 14 Q. -- get the promotion procedures as we go 15 forward. 16 A. Understand, Mr. Morgan, I've never been a team 17 leader. 18 Q. I understand. 19 A. But from what I understand, you become career. 20 And if the position became available, these guys 21 applied, or the career firefighters who was 22 eligible or wanted to apply applied. 23 Q. Are you familiar with the promotion process that</p>
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<p>1 Q. What were the ranks in the fire department in 2 '96 when you applied for lieutenant? 3 A. Okay. Chain of command in '96 was student 4 firefighter, career firefighter, team leader, 5 lieutenant, captain, deputy chief and fire 6 chief. And that's from -- leads to your 7 superior. 8 Q. And what was your understanding as to the 9 evolution of team leaders? What were they to do 10 as you understood it and what did they do? 11 A. Team leaders supervise student firefighters. 12 They were created contingent to the student 13 firefighter program whereas fire lieutenants was 14 part of the career ladder itself. Student 15 firefighters and team leaders was a temporary 16 full-time position whereas lieutenant and up 17 were career positions: salaries, benefits, the 18 whole nine. 19 Q. And where did you get that understanding? 20 A. I got it in writing from the requirements. The 21 understanding, whatever, came through the City 22 of Auburn rules and regulations, et cetera. 23 Q. Team leader would be a career firefighter?</p>	<p>1 was used for team leaders? 2 A. All I can tell you, Mr. Morgan, was it was a 3 structured interview. 4 Q. Did you ever participate in the structured 5 interview? 6 A. I never went through a structured interview for 7 a team leader, but I have on occasion sat in as 8 an interview board. 9 Q. You were on the interview board. How many 10 interview boards did you have -- were you on? 11 A. Several, Mr. Morgan. Estimated four times, I 12 guess. It was several times. 13 Q. In your opinion has the role of a team leader 14 changed from what you just described in '96 up 15 until, what year was it, '06, I guess, that they 16 became lieutenants? 17 A. Yes, sir. 18 Q. Did the role of team leaders change during that 19 period of time? 20 A. For the record, Mr. Morgan, I was the last 21 lieutenant promoted in the Auburn Fire 22 Division. Anything after my promotion was team 23 leaders.</p>



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1 Q. How many lieutenants were there when you were  
2 promoted?  
3 A. Three, maybe four.  
4 Q. You were the last lieutenant?  
5 A. I was the last lieutenant to be promoted in the  
6 Auburn Fire Division through an assessment  
7 center.  
8 Q. So then the team leaders that came after you,  
9 did they assume the responsibilities of a  
10 lieutenant?  
11 A. Through the powers that be, they were allowed to  
12 conduct themselves on my level or on a level of  
13 a fire lieutenant.  
14 Q. So their role, at least in your viewpoint,  
15 expanded from just being supervisors for student  
16 firefighters to assuming the responsibilities of  
17 a lieutenant?  
18 A. They was assuming the responsibilities for  
19 career firefighters.  
20 Q. Say the last year that there were team  
21 leaders -- '04, '05, whatever year that may  
22 be -- in your opinion was there any difference  
23 in what you as a lieutenant did as opposed to

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1 what a team leader did?  
2 A. No, sir. Basically from 1996 and up, they were  
3 acting as station officers, which that's what I  
4 am. I'm a station officer. I just had a  
5 different title as they. And I underwent a  
6 different procedure as far as being promoted.  
7 Other than that they stepped in as a station  
8 officer and conducted themselves as a station  
9 officer to their ability.  
10 Q. Once you were promoted to lieutenant, I assume  
11 you had a new assignment at that point.  
12 A. As far as responsibilities, duties, stations and  
13 all that?  
14 Q. Yes.  
15 A. Yes, sir. I had a very wide range of  
16 responsibilities and duties as a station  
17 officer, fire lieutenant.  
18 Q. Did you apply for any more promotions between  
19 lieutenant in '96 and the battalion chief  
20 promotion in '06?  
21 A. Yes, sir.  
22 Q. What other promotions did you apply for?  
23 A. I applied for training chief -- the training

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1 officer position. Excuse me. I applied for the  
2 deputy fire chief position.  
3 Q. When was the last captain's promotion?  
4 A. If I'm not mistaken, the last one was when I was  
5 promoted. When they did an assessment center  
6 for me in '96, it was an assessment center for  
7 lieutenants and captains.  
8 Q. So you never applied and went through an  
9 assessment center for the position of captain;  
10 is that correct?  
11 A. No, sir.  
12 Q. No, sir, it's not correct or --  
13 A. I didn't apply for the captain --  
14 Q. What I said is correct? You never applied and  
15 went through an assessment center for captain,  
16 true?  
17 A. No, sir.  
18 MR. HORSLEY: That is true?  
19 Q. Wait a minute.  
20 A. That is true. A captain position never came  
21 available during my era.  
22 Q. So you did the lieutenant assessment in '96 at  
23 the same time that they did the captain

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1 assessment?  
2 A. Yes, sir.  
3 Q. What procedure was used for training officer?  
4 A. I underwent what I consider to be a structured  
5 interview.  
6 Q. Let me back up on the captain's assessment  
7 center.  
8 Other than the assessment center, do you  
9 know of any other requirements at that time for  
10 the captain's promotion?  
11 A. I'm not aware of that, sir.  
12 Q. Did you pay any attention one way or the other  
13 what the captains had to do or were you just  
14 interested in being a lieutenant at that time?  
15 A. I just -- It was totally separate. If you  
16 applied for lieutenant, you went to the  
17 lieutenant. If you applied for captain, you  
18 went to captain.  
19 Q. The training officer was a structured interview,  
20 and when was that promotion procedure?  
21 A. I don't recall the actual year or date.  
22 Q. Has it been, say, within the last five years?  
23 A. Yes, sir, it was within the last five.

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<p>1 Q. And who was promoted?</p> <p>2 A. A gentleman by the name of Terry Walker.</p> <p>3 Q. Is he still the training officer?</p> <p>4 A. No, sir. He's retired.</p> <p>5 Q. Who took his place?</p> <p>6 A. A gentleman by the name of John Lankford.</p> <p>7 Q. Did you apply for training officer when</p> <p>8 Lankford --</p> <p>9 A. No, sir, I did not.</p> <p>10 Q. So you applied for training officer one time,</p> <p>11 and that was when Terry Walker received it?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And that was a structured interview?</p> <p>14 A. Pretty much, sir, yes.</p> <p>15 Q. And you sat on, you told me, the structured</p> <p>16 interview panels for team leaders?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Was that a similar-type interview? I'm sure the</p> <p>19 questions were different, but people from</p> <p>20 in-house, firefighters and others --</p> <p>21 A. The difference between team leaders and the</p> <p>22 training officer was the team leader wasn't</p> <p>23 intense like the training officer was. The team</p>	<p>1 Q. And when did you apply for the deputy fire chief</p> <p>2 position?</p> <p>3 A. Again, I don't actually remember the year and</p> <p>4 date, but it was within the five years.</p> <p>5 Q. And who was promoted to that position?</p> <p>6 A. Lee Lamar. Mr. Lee Lamar.</p> <p>7 Q. What was the procedure used at that time?</p> <p>8 A. Basically I submitted an application, and I went</p> <p>9 to a structured interview at City Hall.</p> <p>10 Q. And the panel, was it all firefighters or fire</p> <p>11 division or were there other people on the</p> <p>12 panel?</p> <p>13 A. It was other people on the panel outside of the</p> <p>14 fire division, yes.</p> <p>15 Q. So you had an application and a structured</p> <p>16 interview?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Any other component of that promotion procedure?</p> <p>19 A. No, sir.</p> <p>20 Q. And Mr. Lamar was promoted?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Have we covered all the promotions that you've</p> <p>23 actually applied for -- lieutenant, training</p>
Page 54	Page 56
<p>1 leader basically was a panel of questions that</p> <p>2 was presented to the candidate. When I went</p> <p>3 through training officer, I went through seven</p> <p>4 different scenarios. I had to make, I think it</p> <p>5 was, a three-minute presentation. I had to go</p> <p>6 through what they call, I think it was, an</p> <p>7 in-basket situation where you prioritize your</p> <p>8 responsibilities for the day. It's all on</p> <p>9 paper. And then you undergo an actual interview</p> <p>10 where you sit down and they ask you questions,</p> <p>11 you know. Basically that was it.</p> <p>12 Q. Do you remember who was on your panel or the</p> <p>13 panel?</p> <p>14 A. Dean Garrett, Danny Leverette, Lee Lamar, Larry</p> <p>15 Langley. I can't remember who else.</p> <p>16 Q. So these were all fire division people?</p> <p>17 A. Yes. They was city employees, whether it was</p> <p>18 human resources down through the fire division.</p> <p>19 Q. And Terry Walker, did you think that he was a</p> <p>20 good hire?</p> <p>21 A. At the present time, Mr. Morgan, I didn't know</p> <p>22 anything about Terry Walker so I can't say if he</p> <p>23 was good or bad. I don't know.</p>	<p>1 officer, and deputy fire chief --</p> <p>2 A. Yes.</p> <p>3 Q. -- before the battalion chief?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And then you sat on some of the interview panels</p> <p>6 with the team leader position?</p> <p>7 A. Yes, sir.</p> <p>8 MR. MORGAN: Can we take a quick</p> <p>9 break?</p> <p>10 MR. HORSLEY: Yeah.</p> <p>11 (Brief recess was taken.)</p> <p>12 Q. (Continuing by Mr. Morgan) Did you have any</p> <p>13 involvement or input into the last team leader</p> <p>14 promotion procedure where a written test was</p> <p>15 used?</p> <p>16 A. No, sir.</p> <p>17 Q. Did you know anything about the requirements for</p> <p>18 that last team leader promotion procedure?</p> <p>19 A. No, sir. The only thing I knew, Mr. Morgan, was</p> <p>20 basically information that was presented the day</p> <p>21 of that was going to be questioned to the</p> <p>22 candidates. That's all I know. And I was asked</p> <p>23 to be on the board.</p>

<p style="text-align: right;">Page 57</p> <p>1 Q. And so you were on the structured interview                  2 board or panel for the last team leader                  3 promotion?                  4 A. I don't know if it was the last one, but I do                  5 know I've sat in on several.                  6 Q. Did you ever hear any complaints or comments                  7 about a written test being a component of the                  8 team leader promotion procedure?                  9 A. I don't recall a written test ever being a                  10 component of the promotion procedure for a team                  11 leader.                  12 Q. And then at some point there was a petition                  13 presented to the City for team leaders to become                  14 lieutenants.                  15 A. Yes, sir.                  16 Q. You're familiar with that?                  17 A. Yes, sir.                  18 Q. And you did not join in that petition?                  19 A. I wasn't given the opportunity to join,                  20 Mr. Morgan.                  21 Q. How did that come about?                  22 A. The first I heard or seen anything in reference                  23 to a petition for team leaders and the title</p>	<p style="text-align: right;">Page 59</p> <p>1 were making an effort to change it to                  2 lieutenant?                  3 A. In the fire house, Mr. Morgan, you hear all kind                  4 of rumors. I just don't believe them until I                  5 see them.                  6 Q. So the first actual confirmation that you had                  7 that that was under consideration was when you,                  8 Chris Turner, and Walter Allen were called to a                  9 meeting in December of '05?                  10 A. Yes, sir.                  11 Q. And who was that meeting with?                  12 A. It was my immediate supervisor, Dean Garrett,                  13 Mr. Steve Reeves, Mr. Bill James, Mr. Lamar,                  14 and, of course, Mr. Turner, and Mr. Allen. I                  15 think that's everybody.                  16 Q. And what was the discussion?                  17 A. Basically the discussion was -- the floor was                  18 pretty much open to the point in reference to                  19 what we thought about it. And me, myself, I                  20 requested to see everything in reference to, the                  21 proposal and the reason why we were there and                  22 all. And I was presented with the paperwork                  23 that included thirteen signatures of team</p>
<p style="text-align: right;">Page 58</p> <p>1 change was December of 2005.                  2 Q. And what did you see or hear at that time?                  3 A. Basically me and two other of my insubordinates                  4 (sic) were called to a meeting in the public                  5 safety building. And basically this meeting was                  6 in reference to whether we was for or opposed to                  7 the title change from team leader to                  8 lieutenants.                  9 Q. Who were the other two?                  10 A. Mr. Christopher Turner and Mr. Walter Allen.                  11 Q. Is it your testimony that's the first time that                  12 you learned the City was considering or had been                  13 petitioned to change from team leader to                  14 lieutenant?                  15 A. From my understanding, Mr. Morgan, is basically                  16 this all rendered from when the captains had a                  17 title change to battalion chiefs. So therefore                  18 the team leaders took it upon themselves to                  19 pursue a title change as well. I had heard                  20 rumors, but I didn't have any definite, you                  21 know, idea or information in reference to they                  22 were doing that until that day.                  23 Q. But you had heard rumors that the team leaders</p>	<p style="text-align: right;">Page 60</p> <p>1 leaders. All the team leaders in the                  2 department, their signature was on this                  3 paperwork. And it was provided to me by the --                  4 I guess the public safety director, Mr. James,                  5 gave the okay for me to receive that, and it was                  6 given to me by Mr. Reeves.                  7 Q. You received it at that meeting?                  8 A. Yes, sir.                  9 Q. Let me back up a minute.                  10 Were you the last lieutenant when this                  11 meeting was called?                  12 A. In 1996 I was the last lieutenant to be                  13 promoted.                  14 Q. I understand that, but were you the last actual                  15 lieutenant rank --                  16 A. Yes, sir.                  17 Q. -- in December of '05?                  18 A. The only one, yes, sir.                  19 Q. Now, were Chris Turner and Walter Allen the only                  20 two career firefighters that were not team                  21 leaders?                  22 A. I'm not sure about that, Mr. Morgan. All I know                  23 is they were career firefighters.</p>

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<p>1 Q. And Chris Turner is a black male?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And Walter Allen is a white male?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So you received the paperwork which showed that</p> <p>6 all thirteen of the team leaders --</p> <p>7 Which included Eddie Ogletree, true?</p> <p>8 A. Yes, sir.</p> <p>9 Q. -- had petitioned for team leaders to become</p> <p>10 lieutenants?</p> <p>11 A. Yes, sir. And understand, Mr. Morgan, that was</p> <p>12 the first time I had seen actual paperwork in</p> <p>13 reference to a petition being presented for team</p> <p>14 leaders getting a title change. That was the</p> <p>15 first time. And I confirmed that in the</p> <p>16 meeting. I was like, this is the first time</p> <p>17 I've seen this; can I take time to read it. And</p> <p>18 I read it, and I asked for copies of it.</p> <p>19 Q. Do you know why you and Chris and Walter Allen</p> <p>20 were called to that meeting?</p> <p>21 A. No, sir. I don't know the actual reason, but I</p> <p>22 know I did speak with Mr. Langley with my</p> <p>23 immediate supervisor present prior to that</p>	<p>1 good idea or bad idea?</p> <p>2 A. Yes, sir. I had a choice to make in reference</p> <p>3 to -- I was asked to fill out that paperwork and</p> <p>4 enclose it in an envelope to be submitted to</p> <p>5 human resources.</p> <p>6 Q. And did you do that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And that was all done before this meeting that</p> <p>9 you're telling me about?</p> <p>10 A. Yes, sir. Now, understand, now, this paperwork</p> <p>11 I was given to sign off on was different from</p> <p>12 the paper I received at the meeting.</p> <p>13 Q. Well, how was it different?</p> <p>14 A. Well, basically the letter I received from</p> <p>15 Mr. Langley in the presence of Chief Garrett at</p> <p>16 the time was saying was I for or against.</p> <p>17 Q. Right. A vote.</p> <p>18 A. When I actually got in the meeting, I was, like,</p> <p>19 can somebody provide me with some information in</p> <p>20 reference to what's going on because this is new</p> <p>21 to me, and I want to know, you know, what does</p> <p>22 it involve. And that's when I received the</p> <p>23 paperwork stating everything that had been done</p>
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<p>1 meeting. Mr. Langley.</p> <p>2 Q. Was he in this meeting?</p> <p>3 A. Yes, sir, he was. If I'm thinking correctly, he</p> <p>4 was.</p> <p>5 Q. So Langley, Lamar, James, Reeves, and Garrett</p> <p>6 were in the meeting with you two?</p> <p>7 A. Yes, sir.</p> <p>8 Q. But then you said you spoke to Mr. Langley. Did</p> <p>9 you speak to him outside of this meeting?</p> <p>10 A. I had to sign a form. I had to sign a form</p> <p>11 saying I was in favor of or against the title</p> <p>12 change. And at that time, I submitted some</p> <p>13 paperwork to Mr. Langley.</p> <p>14 Q. Let me back up. I'm a little confused.</p> <p>15 The form that you received whether you were</p> <p>16 in favor or not in favor, did you receive that</p> <p>17 before this meeting with these other people?</p> <p>18 A. I received it from Mr. Langley in his office</p> <p>19 before that meeting.</p> <p>20 Q. That same day or a different day?</p> <p>21 A. I don't think it was the same day, no, sir.</p> <p>22 Q. So you had had an opportunity, then, before that</p> <p>23 to put in whether or not you thought it was a</p>	<p>1 to include the thirteen signatures.</p> <p>2 Q. So when Mr. Langley handed you this form where</p> <p>3 you could vote "yes" or "no" on the name change,</p> <p>4 you didn't understand what was going on?</p> <p>5 A. No, sir, I didn't. Directly speaking, no, I</p> <p>6 didn't know.</p> <p>7 Q. And Mr. Langley didn't explain it to you?</p> <p>8 A. He explained it to me, but, I mean, it's one of</p> <p>9 those situations where I don't believe</p> <p>10 everything I hear regardless of who it comes</p> <p>11 from until I see it. But I know the paperwork</p> <p>12 that I saw and I signed, which was not in favor</p> <p>13 of the title change. And my main reason for</p> <p>14 that, Mr. Morgan, was because I didn't know</p> <p>15 nothing about it. I was never given an</p> <p>16 opportunity to -- in the beginning to sign with</p> <p>17 the other thirteen signatures to say I was for</p> <p>18 or against.</p> <p>19 Q. Well, looking back now, if you had been given</p> <p>20 the information, would your vote have been</p> <p>21 different?</p> <p>22 MR. HORSLEY: Object to the form. You</p> <p>23 can answer.</p>

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- 1 A. No, sir. I still would have been against it.  
 2 Q. But when Mr. Langley handed you this sheet of  
 3 paper, the form which you could vote, he didn't  
 4 explain to you why or that the City had been  
 5 petitioned by the team leaders? He didn't  
 6 explain any of that to you?  
 7 A. I don't recall exactly what he said,  
 8 Mr. Morgan. But, like I said earlier, he gave  
 9 me the paper. I read it. I presented to him my  
 10 paperwork I had. And he said no, and so I  
 11 marked the appropriate place indicating that I  
 12 was not in favor of it. I folded the letter up  
 13 and put it in an envelope, sealed it, and gave  
 14 it to Mr. Langley.  
 15 Q. What paperwork did you give Mr. Langley?  
 16 A. I typed a letter myself on my behalf, the only  
 17 lieutenant in the division, and presented it to  
 18 him basically asking for -- in complainance  
 19 (sic) to whatever the team leaders were doing.  
 20 Q. Now, do you still have copies of that paperwork?  
 21 A. Yes, sir, I do.  
 22 Q. Well, I'm not trying to get into any privileged  
 23 conversations, but do you know if that paperwork

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- 1 was produced as part of your disclosures?  
 2 MR. MORGAN: I can get with you later  
 3 on that.  
 4 A. Mr. Horsley has it. He has a copy of it.  
 5 Q. Let me backtrack one minute.  
 6 When you applied for lieutenant, they had a  
 7 captain's promotion at the same time?  
 8 A. Yes, sir.  
 9 Q. Was there any time in grade requirements for the  
 10 captain promotion or could anybody apply for the  
 11 captain promotion?  
 12 A. Again, sir, I don't know if there was any -- if  
 13 any of that applied. I'm not sure.  
 14 Q. You don't know whether or not you had to be a  
 15 lieutenant to apply for captain or whether just  
 16 a firefighter could apply for captain?  
 17 A. The way it's supposed to work is that you follow  
 18 the chain of command as far as promotions.  
 19 Q. So you gave Chief Langley -- I guess he was  
 20 chief at that time -- some paperwork dealing  
 21 with your complaints about team leaders?  
 22 A. I presented to him a form that I had typed, and  
 23 I asked him to, you know, sign it, him and Chief

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- 1 Garrett both to sign it, if he was in agreement  
 2 of it. And he told me no, and he would not  
 3 sign. So did Chief Garrett, which Chief Garrett  
 4 was acting as a witness.  
 5 Q. What was your paperwork, just the gist of it?  
 6 A. Basically it was just, you know, from -- I guess  
 7 it was drawn upon and presented to him based  
 8 upon what I had heard. And being that I was  
 9 called to his office to sign this form in  
 10 reference to, then therefore I presented to him  
 11 what I would like to have if this is the case.  
 12 Q. And what is it that you would like to have?  
 13 A. I wanted a title change.  
 14 Q. So you knew then even before you went to see  
 15 Chief Langley that there were discussions about  
 16 a title change?  
 17 A. I had heard rumors about a title change. When I  
 18 was called to his office, of course, Chief  
 19 Garrett was with me. That's when it was  
 20 confirmed through me that, yes, there was  
 21 something going on with the title change.  
 22 Q. And did you take Garrett with you?  
 23 A. Yes, sir.

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- 1 Q. And so you wanted your own title changed?  
 2 A. Yes, sir. Just like everybody else, I wanted  
 3 one.  
 4 Q. And what title change did you want?  
 5 A. I wanted captain.  
 6 Q. Well, now, at that time were there still captain  
 7 positions or had the captains been renamed  
 8 battalion chiefs?  
 9 A. The captains had been renamed battalion chiefs.  
 10 Q. So if the team leaders became lieutenants, you  
 11 wanted a title change from lieutenant to  
 12 captain?  
 13 A. Yes, sir.  
 14 Q. So then you and Chris Turner and Walter Allen  
 15 meet with these people that you've told me  
 16 about: Dean, Steve, Lee, and Larry. What did  
 17 y'all talk about in that meeting?  
 18 A. Basically what was presented at the meeting was  
 19 basically what has been going on as far as the  
 20 paperwork that had been submitted, those who was  
 21 in favor of, the review of whatever rules and  
 22 regulations that was in place involving the  
 23 division and the -- fire division and the City,



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<p>1 and basically where they were and what they was</p> <p>2 going to do or what they was, you know, planning</p> <p>3 to do.</p> <p>4 Q. What was it they were planning to do?</p> <p>5 A. They was planning to go forward with the title</p> <p>6 change from team leaders to lieutenants.</p> <p>7 Q. And what was your response or reaction?</p> <p>8 A. Well, I tried to remain as calm and professional</p> <p>9 as I possibly could. Nevertheless, things got a</p> <p>10 little out of order with Mr. Turner and</p> <p>11 Mr. Allen. So at that point I kind of thought</p> <p>12 things was out of hand. So therefore I just</p> <p>13 renamed calm until I could actually speak on my</p> <p>14 behalf in reference to what I thought.</p> <p>15 Q. And how did it get out of hand with Turner and</p> <p>16 Allen?</p> <p>17 A. Apparently their reaction to it was their</p> <p>18 reaction. They reacted to it. They got up.</p> <p>19 They seemed to get a little irate about it and</p> <p>20 all that and -- Something I would have never</p> <p>21 done.</p> <p>22 Q. Do you remember any specific comments that</p> <p>23 Turner or Allen made?</p>	<p>1 Fire Division and he needed to look into it.</p> <p>2 Q. What was that problem?</p> <p>3 A. Basically there was some things taking place</p> <p>4 down there that I deemed unfair, that I deemed</p> <p>5 inconsistent, that basically needed some</p> <p>6 attention, needed to be looked into and</p> <p>7 corrected before it got any worse.</p> <p>8 Q. And tell me what they are.</p> <p>9 A. Well, I mean --</p> <p>10 Q. Did you give him some specifics or --</p> <p>11 A. No, sir. I didn't tell him anything specific</p> <p>12 because at that time I thought -- it was several</p> <p>13 things going on, and that's just me thinking</p> <p>14 that. I'm speaking for myself.</p> <p>15 Q. Well, did you tell Bill James what things were</p> <p>16 going on that you thought were unfair or</p> <p>17 inconsistent or needed attention?</p> <p>18 A. I was not specific with that, Mr. Morgan.</p> <p>19 Q. And what was Mr. James' response to your saying</p> <p>20 that things were unfair or inconsistent?</p> <p>21 A. Mr. James was very, very considerate. He was</p> <p>22 very polite and very professional, and he say he</p> <p>23 want everything to be right for everybody, not</p>
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<p>1 A. I recall a comment made by Turner when he was</p> <p>2 asking for a title change as well.</p> <p>3 Q. What did he want to be?</p> <p>4 A. I don't know. I don't know what he wanted to</p> <p>5 be, being he was a firefighter. I don't know.</p> <p>6 Q. Do you remember him making the statement that he</p> <p>7 didn't have any opposition to team leaders being</p> <p>8 lieutenants as long as he became a lieutenant?</p> <p>9 A. I don't recall that, Mr. Morgan. I'm sorry.</p> <p>10 Q. Did you eventually make some verbal response to</p> <p>11 what you had heard?</p> <p>12 A. Yes, sir, I did.</p> <p>13 Q. And what did you say?</p> <p>14 A. Basically what I did, Mr. Morgan, is when</p> <p>15 everything calmed down to a certain point, I</p> <p>16 asked to speak to Mr. James in private. He</p> <p>17 accepted my request.</p> <p>18 Q. What did y'all talk about?</p> <p>19 A. Basically I told Mr. James -- I thanked him for</p> <p>20 calling me in and letting me know what was</p> <p>21 officially going on and working with me to bring</p> <p>22 me up to par. But at the same time, I told</p> <p>23 Mr. James that there was a problem at the Auburn</p>	<p>1 in those words. But, again, I specifically</p> <p>2 directed to him that there was a problem at the</p> <p>3 Auburn Fire Division and he needed to look into</p> <p>4 it.</p> <p>5 Q. Anything else that you recall saying to</p> <p>6 Mr. James in y'all's private meeting?</p> <p>7 A. No, sir. It was just very brief and very to the</p> <p>8 point.</p> <p>9 Q. Anything else you recall saying in the meeting</p> <p>10 with everyone other than asking to speak</p> <p>11 privately with Mr. James?</p> <p>12 A. I can't think of nothing else at this time,</p> <p>13 Mr. Morgan.</p> <p>14 Q. Turner and Allen, you testified they became</p> <p>15 irate and I think in your opinion probably acted</p> <p>16 unprofessional?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did they leave before you asked to speak to Bill</p> <p>19 James or did --</p> <p>20 A. I don't know exactly when they left, but at that</p> <p>21 point when everything appeared to have calmed</p> <p>22 down, I asked to speak to Mr. James in private.</p> <p>23 And, you know, as far as how they departed and</p>

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1 how they left, I really don't know.  
 2 Q. Did you come back into the main meeting or did  
 3 you leave --  
 4 A. No, sir, I didn't leave. Me and Mr. James did  
 5 not leave. Everybody else left, and me and  
 6 Mr. James stayed.  
 7 Q. So they were gone and just the two of y'all?  
 8 A. Yes, sir.  
 9 Q. And then the name change was eventually approved  
 10 from team leader to lieutenant?  
 11 A. Yes, sir, it was approved.  
 12 Q. Are there any people or team leaders who in your  
 13 opinion are not qualified to serve as  
 14 lieutenants?  
 15 A. I'm not in that position to say if they are  
 16 qualified or not, Mr. Morgan. All I know is  
 17 they applied and they were promoted.  
 18 Q. Now, let's backtrack a minute.  
 19 A. Yes, sir.  
 20 Q. My understanding is, I guess from your testimony  
 21 so I want to be clear on this, there had earlier  
 22 been a name change from captain to battalion  
 23 chief.

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1 A. That's when it all started, yes, sir.  
 2 Q. When did that occur?  
 3 A. I'm not sure on the date, Mr. Morgan, but I know  
 4 it happened -- I think it happened within the  
 5 past five years. But, understand, that's when  
 6 the whole title change thing came about. You  
 7 had all the captains made a proposal to the city  
 8 manager at the time. And to make a long story  
 9 short, it happened. So from that point, it just  
 10 went on.  
 11 Q. Did you have any conversations with anybody that  
 12 would have been involved in that process? And  
 13 I'm assuming that's going to be the city  
 14 manager, from what you've testified, the  
 15 captains, deputy chief, and chief. Did you have  
 16 any conversations with any of those people about  
 17 the name change from captain to battalion chief?  
 18 A. No, sir.  
 19 Q. Did you have any conversations with any of these  
 20 people that you've sued in this lawsuit: Larry  
 21 Langley, Lee Lamar, Bill Ham, Jr., Steven  
 22 Reeves, Bill James, Charles Duggan, and Cortez  
 23 Lawrence? Did you have any conversations with

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1 any of them --  
 2 A. No, sir.  
 3 Q. -- about the name change from --  
 4 A. Other than the meeting that I had with Mr. Allen  
 5 and Mr. Turner, that's the only time I conversed  
 6 with Mr. Reeves. That was in reference to team  
 7 leader to a lieutenant. But nothing about -- I  
 8 didn't have no dealings, didn't know how they  
 9 was doing it or what they were doing in  
 10 reference to captain to battalion chief.  
 11 Q. Was Cortez Lawrence still employed with the City  
 12 when the name change occurred?  
 13 A. To my knowledge, no.  
 14 Q. He left --  
 15 A. Years ago.  
 16 Q. -- years ago, didn't he?  
 17 A. Yes, sir.  
 18 Q. Do you know why he's been sued?  
 19 A. I have no idea.  
 20 MR. HORSLEY: Off the record.  
 21 (Brief off-the-record discussion.)  
 22 Q. How was it announced, official announcement,  
 23 that from this day forward captains will now be

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1 battalion chiefs? How would that be announced?  
 2 A. If I'm thinking correctly, Mr. Morgan, it came  
 3 from a memorandum or a letter directed to the  
 4 division. And, of course, when it occurred,  
 5 word of mouth.  
 6 Q. And at that point captains were then referred to  
 7 as battalion chiefs?  
 8 A. Yes, sir.  
 9 Q. Did you make any formal complaint either through  
 10 the grievance procedure or EEOC protesting the  
 11 change from captain to battalion chief?  
 12 A. No, sir.  
 13 Q. Did you make any verbal complaints to Langley or  
 14 Lamar or Ham or Reeves or Bill James or Charles  
 15 Duggan?  
 16 A. No, sir.  
 17 Q. And from your observations, did the battalion  
 18 chiefs continue to operate similar to what the  
 19 captains had done before?  
 20 A. Basically the only thing that changed was the  
 21 title. The responsibilities and all that went  
 22 hand in hand.  
 23 Q. When did you learn there would be a promotion

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<p>1 procedure or process to battalion chief?</p> <p>2 A. I received it through a memorandum or a letter</p> <p>3 directed to the division.</p> <p>4 Q. And did you receive it the same day or within a</p> <p>5 day or two of the memorandum being published?</p> <p>6 A. Basically, if I'm thinking correctly, it was</p> <p>7 posted. I think it was done in two places: At</p> <p>8 the stations and through e-mail -- City e-mail.</p> <p>9 Q. The City has an e-mail? They send out things on</p> <p>10 e-mail?</p> <p>11 A. Yes, sir.</p> <p>12 Q. As an employee do you receive those e-mails on</p> <p>13 duty or can you receive them off duty?</p> <p>14 A. The information -- I don't know what procedures</p> <p>15 they use to send the information, but they send</p> <p>16 them as far as I know randomly. It could come</p> <p>17 on a day when I'm at work. It could come on a</p> <p>18 day when I'm off work.</p> <p>19 Q. Do you have a home computer?</p> <p>20 A. Yes, sir, I do.</p> <p>21 Q. Can you check the City of Auburn Web site --</p> <p>22 A. Yes, sir.</p> <p>23 Q. -- for these e-mails from home?</p>	<p>1 this one here, I think I saw it on e-mail.</p> <p>2 Q. I'm going to get to Number 2.</p> <p>3 A. But this one I saw in the station only.</p> <p>4 Q. Is Number 1 also sent by e-mail?</p> <p>5 A. I haven't seen nothing like this sent on e-mail.</p> <p>6 Q. But it's posted in the station?</p> <p>7 A. Yes, sir.</p> <p>8 Q. All right. And then Defendant's Exhibit Number</p> <p>9 2 is the one that you received by e-mail?</p> <p>10 A. If I'm thinking correctly, sir, I did get a copy</p> <p>11 of this on e-mail.</p> <p>12 Q. And that's the memorandum I think you were</p> <p>13 testifying about earlier?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And it says you must be a current</p> <p>16 non-probationary lieutenant. It talks about an</p> <p>17 orientation session, and it says a written exam</p> <p>18 will be a component of the assessment process.</p> <p>19 Reading materials have been obtained.</p> <p>20 That's all in the e-mail that was sent on</p> <p>21 Exhibit 2, true?</p> <p>22 A. Yes, sir.</p> <p>23 Q. When you received that e-mail, did you register</p>
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<p>1 A. Yes, sir.</p> <p>2 (Defendant's Exhibits 1 and 2 marked</p> <p>3 for identification.)</p> <p>4 Q. Let me show you what I'm marking as Defendant's</p> <p>5 Exhibit Number 1. Let me show you 1 and 2.</p> <p>6 Does Defendant's Exhibit Number 1 appear to be</p> <p>7 the posting for the position of battalion chief?</p> <p>8 A. It appears to be, yes, sir.</p> <p>9 Q. Is that what would have been posted in, you</p> <p>10 said, two places: the stations and -- Where was</p> <p>11 the other place it would have been posted?</p> <p>12 A. E-mail.</p> <p>13 Exhibit 1 was posted at the station.</p> <p>14 Q. And I think it's dated February 16.</p> <p>15 A. Yes, sir. 2006.</p> <p>16 Q. And would it be fair to say that you would have</p> <p>17 observed that either February 16 or within a day</p> <p>18 or two of that day?</p> <p>19 A. Within that week, yes, sir, I would have</p> <p>20 observed it.</p> <p>21 Q. And in addition to it being posted at stations,</p> <p>22 that job notice is also sent out by e-mail?</p> <p>23 A. Well, you haven't gotten to Exhibit 2 yet, but</p>	<p>1 any objection at that time to -- Let me back up.</p> <p>2 I assume you would have received that</p> <p>3 e-mail -- Is that memo also posted or is it just</p> <p>4 sent by e-mail?</p> <p>5 A. I recall seeing one on the board just like this</p> <p>6 one around the station, but it could easily be</p> <p>7 somebody got a copy of the e-mail and put it up</p> <p>8 there. I don't know.</p> <p>9 Q. Is it fair to say you would have received that</p> <p>10 e-mail or observed that memo either February 17</p> <p>11 or within a day or two thereafter?</p> <p>12 A. Give or take within a week, yes, sir.</p> <p>13 Q. And did you make any complaints at that time to</p> <p>14 anybody about the written exam being a component</p> <p>15 of the assessment process?</p> <p>16 A. No, sir.</p> <p>17 (Defendant's Exhibit 3 marked for</p> <p>18 identification.)</p> <p>19 Q. And let me show you what's going to be marked as</p> <p>20 Defendant's Exhibit Number 3, which is another</p> <p>21 memo dated February 23, which discovered that</p> <p>22 non-probationary firefighters and probationary</p> <p>23 lieutenants were eligible and reaffirmed when</p>



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1 the orientation was going to be. And that's  
 2 dated February 23. I assume that you either saw  
 3 or received that --  
 4 A. Yes, sir, I did.  
 5 Q. -- February 23rd or within a day or two of that?  
 6 A. Yes, sir.  
 7 Q. Did you register any complaint for  
 8 non-probationary firefighters or probationary  
 9 lieutenants being eligible to apply for the  
 10 battalion chief vacancy?  
 11 A. When I read this, I was kind of puzzled due to  
 12 the fact that why are probationary employees  
 13 allowed to apply for this position, you know. I  
 14 was somewhat familiar of the first memo. But  
 15 when I received this one, it really puzzled me.  
 16 But, no, sir, I did not make a complaint. I  
 17 didn't say nothing. I just followed the  
 18 procedures in place.  
 19 Q. You didn't have any conversations with anyone  
 20 about there being a written test component nor  
 21 probationary -- non-probationary firefighters  
 22 and probationary lieutenants being eligible. Is  
 23 that a fair statement?

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1 A. Yes, sir, that's a fair statement.  
 2 Q. And, now, I understand that at least in this  
 3 lawsuit you've made some complaint about there  
 4 being no non-probationary firefighters and  
 5 probationary lieutenants being eligible. Were  
 6 any non-probationary firefighters promoted to  
 7 battalion chief as a result of this process?  
 8 A. As a result of this process, no, sir.  
 9 Q. Were any probationary lieutenants promoted to  
 10 battalion chief as a result of this process?  
 11 A. The only thing I can recall, Mr. Morgan, is I  
 12 recall an incident where a probationary  
 13 firefighter was promoted to team leader, and I  
 14 also recall an incident where a firefighter was  
 15 promoted to captain and then eventually promoted  
 16 to acting fire chief.  
 17 Q. Well, my question is: In terms of the  
 18 complaints about the battalion chief promotion  
 19 procedure in 2006, isn't it true that no  
 20 non-probationary firefighters were promoted to  
 21 battalion chief in 2006?  
 22 A. Yes, sir.  
 23 Q. And were any probationary lieutenants promoted

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1 to battalion chief?  
 2 A. No, sir.  
 3 (Defendant's Exhibit 4 marked for  
 4 identification.)  
 5 Q. Let me show you what I'm going to mark as  
 6 Defendant's Exhibit Number 4. Do you recognize  
 7 that as the sign-in sheet for the battalion  
 8 chief assessment orientation, which was February  
 9 28, 2006?  
 10 A. Yes, sir. This is the sheet.  
 11 Q. And is that your signature?  
 12 A. Yes, sir, that's my signature.  
 13 Q. And you attended that orientation?  
 14 A. Yes, sir, I did.  
 15 Q. How long was that orientation?  
 16 A. If I'm thinking correctly, it was two to three  
 17 hours.  
 18 Q. Who conducted the orientation?  
 19 A. It was several people there -- a couple of  
 20 people there, Mr. Morgan. You had two  
 21 representatives from human resources:  
 22 Ms. Stephanie King, Mr. Reeves. You had a  
 23 representative from the company who I guess

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1 provided the test for the division, CWH, I  
 2 suppose. He was there. Chief Lamar was there,  
 3 and I think vaguely Larry Langley was there.  
 4 Q. You're not as certain on him, but you think he  
 5 was?  
 6 A. I think I recall seeing him there for a short  
 7 period of time. Mr. Lamar pretty much handled  
 8 everything.  
 9 Q. Any other non-applicants you recall being there  
 10 other than Stephanie King, Steve, the  
 11 representative from CWH, Lee Lamar, or Larry  
 12 Langley?  
 13 A. No, sir, I don't recall anybody else.  
 14 Q. The representative from CWH, was that a male or  
 15 female?  
 16 A. It was a white male.  
 17 Q. Look on that list and tell me who on that list  
 18 was a non-probationary firefighter.  
 19 A. According to this list, nobody on here that I'm  
 20 aware of was a non-probationary firefighter.  
 21 Q. Well, was everyone on that list a team leader  
 22 with the exception of Chris Turner?  
 23 A. Chris Turner was a career firefighter.

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1 Q. And he was not a team leader or a lieutenant?

2 A. No, sir.

3 Q. Is he the only one on that list?

4 A. Yes, sir.

5 MR. HORSLEY: When you say team

6 leader, you're referring to team

7 leaders that have now been changed

8 to lieutenant?

9 MR. MORGAN: Right.

10 Q. My point is: The only person on the list who

11 was not a lieutenant via assessment center or

12 team leader was Chris Turner, true?

13 A. I'm not sure about Carson. He may have been.

14 He may have not. I'm not really sure. But I

15 know Chris Turner was a firefighter.

16 Q. And he's a black male?

17 A. Yes, sir.

18 Q. And the record will show this. I'm not --

19 A. Yes, sir. I understand.

20 Q. This isn't any test that you're going to pass or

21 fail, but do you recognize the names of anybody

22 else on the list other than Chris Turner that

23 was a career firefighter that was not a team

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1 leader or hadn't been either a team leader or

2 lieutenant? You said possibly Clay Carson?

3 A. Yes, sir. I think Carson was a firefighter and

4 recently became a lieutenant, but I'm not clear

5 on him. For the record, I know Chris Turner was a

6 firefighter.

7 Q. There's no question Chris Turner was?

8 A. No question.

9 Q. And who on the list would have been a

10 probationary lieutenant --

11 A. No one.

12 Q. -- at the time?

13 A. If it was anybody, it was Carson.

14 Q. And did Clay Carson score -- he's a white male,

15 is he not?

16 A. Yes, sir.

17 Q. Did he score high enough on the written test to

18 go to the assessment portion of the battalion

19 chief --

20 A. That I recall, Clay Carson did not take the

21 test.

22 Q. Did not take the test. Okay.

23 A. He wasn't there when I took it.

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1 Q. So we can take him out of the equation.

2 A. If you choose to, yes, sir.

3 Q. So the only career non-probationary firefighter

4 who took the battalion chief written test who

5 was not a lieutenant was Chris Turner, a black

6 male?

7 A. I know Chris Turner took the test.

8 Q. Did you keep notes of the orientation session?

9 A. I don't recall taking any notes. We were

10 provided study material in reference to the test

11 at some particular time or another. But, no,

12 sir, I don't recall any notes I took during

13 orientation.

14 (Defendant's Exhibit 5 marked for

15 identification.)

16 Q. I'm going to mark this as Number 5. Did you

17 receive this document at the orientation?

18 A. It looks familiar, Mr. Morgan. Yes, sir.

19 Q. And that is an Auburn Fire Division Orientation

20 Manual. That's the title of it, true?

21 A. Yes, sir.

22 Q. And you did receive that at the orientation

23 session?

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1 A. I think so.

2 Q. And did the people that you've testified were

3 there -- Stephanie King, Steve Reeves, Lee and

4 the WCA's representative -- did they go over

5 that document with you?

6 A. A lot of things was discussed that day,

7 Mr. Morgan. I can't specifically remember what

8 was went over and what was discussed. But it

9 was a lot of information involved, and

10 everything that I think was presented was

11 touched upon as far as orientation, yes, sir.

12 Q. The bottom line is: It was explained to the

13 applicants the testing process?

14 A. Yes, sir. It was told to us basically how it

15 would be implemented and worked and I guess

16 scored and applied to whatever was going on.

17 Q. And the percentages as to people taking the

18 written test, who would be eligible to proceed

19 on to the assessment program part of it?

20 A. Basically the understanding I had when I was

21 there was if you passed the written test, you

22 proceed.

23 Q. If you didn't pass the written test --

<p style="text-align: right;">Page 89</p> <p>1 A. If you didn't pass, you didn't proceed.</p> <p>2 Q. You talked about a reading material or study</p> <p>3 material list. Did you receive a list -- I know</p> <p>4 you got some books. I'm going to get to that in</p> <p>5 a minute. Was there an actual list that was</p> <p>6 given out or was the list discussed or was it in</p> <p>7 that manual?</p> <p>8 A. The only thing I remember was that I was</p> <p>9 notified to come to the public safety building</p> <p>10 to Mr. Lamar's office and receive your study</p> <p>11 material.</p> <p>12 Q. But you were made aware in the orientation</p> <p>13 session that study materials would be provided?</p> <p>14 A. Yes, sir.</p> <p>15 Q. The person from CWH, do you recall anything that</p> <p>16 he said about the test, how the test was</p> <p>17 devised, the purpose of the test?</p> <p>18 A. I don't recall that, sir.</p> <p>19 Q. Did you make any complaint at the orientation</p> <p>20 session, which I think was February 28, 2006 --</p> <p>21 did you make any complaint at the orientation</p> <p>22 session about a written test?</p> <p>23 A. No, sir.</p>	<p style="text-align: right;">Page 91</p> <p>1 King's role being at that session.</p> <p>2 A. The first person I saw when I came to</p> <p>3 orientation that I guess had something to do</p> <p>4 with presenting the material was Ms. King. She</p> <p>5 was actually setting up the projectile and all</p> <p>6 that in the room I guess preparing everything</p> <p>7 for presentation.</p> <p>8 Q. Did you have any conversation with Stephanie?</p> <p>9 A. Other than hello; how are you doing; good to see</p> <p>10 you, no, sir.</p> <p>11 Q. Do you remember anything that she said or</p> <p>12 contributed to the orientation session other</p> <p>13 than setting up the equipment?</p> <p>14 A. From what I experienced and saw, it looked as if</p> <p>15 Ms. King or Mr. Reeves was working together to</p> <p>16 do whatever they had to do as far as human</p> <p>17 resources. But vaguely do I recall Ms. King</p> <p>18 saying anything in reference to. She was</p> <p>19 present with Mr. Reeves.</p> <p>20 Q. What about Steve Reeves? What do you recall his</p> <p>21 role being?</p> <p>22 A. Mr. Reeves made a brief presentation in</p> <p>23 reference to welcoming everybody in so many</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. The people that were conducting the orientation,</p> <p>2 did they ask people -- the participants if they</p> <p>3 wanted to -- needed to ask questions or</p> <p>4 anything?</p> <p>5 A. That I recall, I think it was a time available</p> <p>6 for questioning throughout the whole --</p> <p>7 throughout the hours we were there, but I can't</p> <p>8 recall any specifics at this time. I know I</p> <p>9 can't.</p> <p>10 Q. Did you ask any questions?</p> <p>11 A. No, sir, I didn't.</p> <p>12 Q. Did Mr. Ogletree ask any questions?</p> <p>13 A. I'm not aware of that, sir, if he did or not.</p> <p>14 Q. How about Chris Turner?</p> <p>15 A. I'm not aware of that either, sir.</p> <p>16 Q. Did anybody complain about a written test being</p> <p>17 part of the promotion procedure at the</p> <p>18 orientation?</p> <p>19 A. I'm not aware of anybody complaining,</p> <p>20 Mr. Morgan.</p> <p>21 Q. And I know this was, what, two years ago and a</p> <p>22 three-hour session, but just as best you can</p> <p>23 remember, tell me what you recall Stephanie</p>	<p style="text-align: right;">Page 92</p> <p>1 words, and then he turned things over to the</p> <p>2 representative from CWH.</p> <p>3 Q. Do you recall Steve Reeves explaining any of the</p> <p>4 testing procedures or what would be -- which the</p> <p>5 applicants would go through?</p> <p>6 A. I don't remember, sir. I'm sorry. I don't</p> <p>7 recall that.</p> <p>8 Q. Do you remember Steve Reeves saying anything</p> <p>9 about how the procedure was developed?</p> <p>10 A. I don't remember, sir. I'm sorry.</p> <p>11 Q. Do you remember Steve Reeves saying anything</p> <p>12 about how it was determined that there would be</p> <p>13 a written test and then you would go from the</p> <p>14 written test if you passed to the remainder of</p> <p>15 it, the assessment part? Do you remember any of</p> <p>16 that from Mr. Reeves?</p> <p>17 A. The only person I recall saying that or</p> <p>18 explaining in detail how it would work was the</p> <p>19 representative for CWH. But I don't recall -- I</p> <p>20 can't remember if he did or not -- did say that,</p> <p>21 Mr. Morgan. I don't remember.</p> <p>22 Q. "He" being Steve Reeves?</p> <p>23 A. Yes.</p>

<p style="text-align: right;">Page 93</p> <p>1 Q. What about Larry Langley? What was his role or</p> <p>2 what did he contribute to the --</p> <p>3 A. That I remember, Mr. Langley walked in the room</p> <p>4 before we even got started and left, and I never</p> <p>5 saw him again.</p> <p>6 Q. And Lee Lamar, what do you recall his input or</p> <p>7 participation being?</p> <p>8 A. Mr. Lamar was there, that I recall, for the</p> <p>9 entire time of the orientation. And I vaguely</p> <p>10 remember him having some input, if he was</p> <p>11 questioned about it, in reference to the</p> <p>12 division itself and all that. That's basically</p> <p>13 all I remember on that.</p> <p>14 Q. Do you remember Lee saying anything specifically</p> <p>15 about how the test was developed?</p> <p>16 A. No, sir.</p> <p>17 Q. Do you remember Lee saying anything specifically</p> <p>18 about how the components were derived and</p> <p>19 processed, came about?</p> <p>20 A. I don't remember that, sir.</p> <p>21 Q. Tell me what you recall the CWH representative</p> <p>22 saying about the test.</p> <p>23 A. Basically he was saying that the questions was</p>	<p style="text-align: right;">Page 95</p> <p>1 was given because -- supposedly it was in</p> <p>2 reference to the test that was being given.</p> <p>3 That's the understanding I had.</p> <p>4 Q. The study materials would help you on the test?</p> <p>5 A. Supposedly help us on the test.</p> <p>6 Q. Now, anything else specific that you recall from</p> <p>7 the CWH representative?</p> <p>8 A. No, sir, I don't. I don't recall anything.</p> <p>9 Q. Did the representative from CWH go over any</p> <p>10 sample questions with you and the other</p> <p>11 participants at that orientation?</p> <p>12 A. I don't remember Mr. Morgan. We went over so</p> <p>13 much within those hours, I just don't remember.</p> <p>14 Q. What was your understanding from the orientation</p> <p>15 session and what you were being told as to how</p> <p>16 the questions were developed? What was your</p> <p>17 understanding as to why the questions that you</p> <p>18 were going to be asked were going to be those</p> <p>19 questions?</p> <p>20 A. I don't have any idea on how they drew up their</p> <p>21 questions. I don't have a clue.</p> <p>22 Q. The reading materials that were discussed, did</p> <p>23 they all relate to fire duties?</p>
<p style="text-align: right;">Page 94</p> <p>1 drawn from whatever procedures they have, and</p> <p>2 they had been representing several cities or</p> <p>3 municipalities around the nation, you know.</p> <p>4 Just told us a little bit about the company</p> <p>5 within itself, and he started going over the</p> <p>6 material. I think he had a slide presentation,</p> <p>7 and we just gradually worked through the whole</p> <p>8 orientation process of that evening.</p> <p>9 Q. What do you recall the slide presentation being</p> <p>10 about?</p> <p>11 A. I think it was in reference to the study</p> <p>12 material we had, the things to study or</p> <p>13 something of that nature. But I can't</p> <p>14 specifically remember what it was pertaining to.</p> <p>15 Q. Do you remember if the CWH representative</p> <p>16 explained to the participants that questions</p> <p>17 would be drawn from these study materials?</p> <p>18 A. It's a great chance he could have said that, but</p> <p>19 I just don't remember at this time, Mr. Morgan.</p> <p>20 I'm sorry.</p> <p>21 Q. What was your understanding as to the purpose of</p> <p>22 the study materials?</p> <p>23 A. My understanding of the study material was it</p>	<p style="text-align: right;">Page 96</p> <p>1 A. They were actually -- If I remember correctly,</p> <p>2 they were essentials of some sort in the field</p> <p>3 of firefighting.</p> <p>4 Q. Were any of them related more to supervision</p> <p>5 than firefighting, or were they all -- as you</p> <p>6 heard it, did they all appear to be related to</p> <p>7 what you would be doing as an officer?</p> <p>8 MR. HORSLEY: The study materials?</p> <p>9 MR. MORGAN: Yeah.</p> <p>10 A. From what I looked at and what was presented to</p> <p>11 me, Mr. Morgan, the material was of an advanced</p> <p>12 level. And what I consider to be an advanced</p> <p>13 level is a management position within the fire</p> <p>14 division.</p> <p>15 Q. And the battalion chief is an advanced level, is</p> <p>16 it not?</p> <p>17 A. Yes, sir.</p> <p>18 Q. That's what --</p> <p>19 A. Superior, advanced, you know. Yes, sir.</p> <p>20 Q. That's the next rank below the deputy chief?</p> <p>21 A. Yes, sir. In the Auburn Fire Division.</p> <p>22 Q. Well, the discussion from the CWH representative</p> <p>23 as to the test and what would be included and</p>

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1 what was expected, did it appear to be related  
 2 to what a person would do as a supervisory  
 3 officer in the Auburn Fire Department?  
 4 A. Now, that was a question. I mean, we have ways  
 5 we do things in Auburn, and people have ways  
 6 they do things in Montgomery. But the  
 7 essentials itself I guess was the appropriate or  
 8 the common way or the popular way, however they  
 9 put it, that they think something should  
 10 happen. I mean, it didn't directly apply to the  
 11 way we do things in Auburn, but it was  
 12 officially essential in reference to, you know,  
 13 advanced positions of that nature.  
 14 Q. The discussion in your opinion was that these  
 15 were essential functions of that rank, but it  
 16 may not be the way we do it in Auburn?  
 17 A. Yes, sir.  
 18 Q. And did you register any complaint with the WCH  
 19 representative about those type questions being  
 20 asked on the test?  
 21 A. No, sir.  
 22 Q. Did anybody?  
 23 A. I'm not aware of that, sir. If somebody did,

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1 I'm not aware of it.  
 2 Q. Do you know what input into the written test any  
 3 officers with the City of Auburn Fire Division  
 4 had?  
 5 A. There were rumors that the battalion chiefs at  
 6 the time played a role in some part of it, but I  
 7 don't know. I'm not aware if they did. I'm not  
 8 aware what part they played.  
 9 Q. Let's assume that the battalion chiefs at Auburn  
 10 played a role in the written test that was  
 11 developed for the position of battalion chief.  
 12 Would you agree with me that that would be a  
 13 good thing?  
 14 MR. HORSLEY: Object to the form. You  
 15 can answer if you know how.  
 16 A. I think just like with team leaders,  
 17 lieutenants, the whole nine, I think battalion  
 18 chiefs should play a role in the overall  
 19 promotional procedure. Now, the test, I'm not  
 20 sure about that.  
 21 Q. Not sure about what, whether they did or not?  
 22 A. I'm not sure if they played a role in the  
 23 questions that was on the test. I'm not sure of

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1 that.  
 2 Q. And I understand that you've testified to that.  
 3 My question is: Assume they did. Would you  
 4 agree with me that battalion chiefs playing a  
 5 role in helping develop the written test, if  
 6 that occurred, would be a good thing?  
 7 MR. HORSLEY: Object to the form. You  
 8 can answer.  
 9 A. That would be a good resource, yes, sir.  
 10 Q. Was there anything that the representative from  
 11 CWH said at the orientation session that day  
 12 that would be included on the test, whether it  
 13 was a written test or the assessment part of it,  
 14 that you thought didn't have anything to do with  
 15 fire work?  
 16 A. I don't recall anything, Mr. Morgan. I mean, he  
 17 was presenting information that was available  
 18 that I guess was being directed to the  
 19 candidates, which was me and all the others that  
 20 was present.  
 21 Q. Are you aware of any orientation sessions other  
 22 than this one?  
 23 A. This is the only one I can recall.

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1 Q. Do you know of any special meetings or  
 2 orientation sessions that white applicants had  
 3 with these people that were there, including the  
 4 CWH representative, that you were not a part of?  
 5 A. To my knowledge, no, sir, I don't know anything  
 6 about that.  
 7 Q. As far as you know, everybody attended the same  
 8 orientation session. You have no evidence  
 9 otherwise?  
 10 A. No evidence otherwise.  
 11 Q. And as far as you know, that was the only  
 12 orientation session that was given, true?  
 13 A. That's all I know, yes, sir.  
 14 MR. HORSLEY: Is this a decent time  
 15 for a break?  
 16 MR. MORGAN: Yeah.  
 17 (Lunch recess.)  
 18 (Defendant's Exhibits 6, 7 and 8  
 19 marked for identification.)  
 20 Q. (Continuing by Mr. Morgan) Let me show you what  
 21 I'm marking as three exhibits, 6, 7, and 8. Do  
 22 you recall receiving Exhibit 6, which is a memo,  
 23 letter, to the candidates outlining the dates



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<p>1 and guidelines for the exam? Do you recall</p> <p>2 receiving that?</p> <p>3 A. Yes, sir, I do.</p> <p>4 Q. Would you have received that on or about March</p> <p>5 3, 2006?</p> <p>6 A. Yes, sir, on or about.</p> <p>7 Q. And the next two exhibits, 7 and 8, both of them</p> <p>8 say they are the battalion chief reading list</p> <p>9 check-out sheet, and they have your signature on</p> <p>10 both of these. Signature on one and initials --</p> <p>11 yeah -- Signatures and initials on both.</p> <p>12 A. Yes, sir.</p> <p>13 Q. And those are both dated March 3, 2006, true?</p> <p>14 A. Yes, sir, they are.</p> <p>15 Q. When you signed these 7 and 8, would you have</p> <p>16 received -- by that time would you already have</p> <p>17 received Defendant's Exhibit Number 6, which is</p> <p>18 the letter outlining the dates and guidelines?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Now, the one that I guess that's Exhibit 7 has</p> <p>21 your signature, and then it has some initials</p> <p>22 and then it has a number, number 14. I guess</p> <p>23 that's a book number that you received?</p>	<p>1 A. No, sir. Those are not mine.</p> <p>2 Q. And how about the number 14? Is that your</p> <p>3 handwriting or is that someone else's</p> <p>4 handwriting?</p> <p>5 A. That's somebody else's handwriting.</p> <p>6 Q. But that's your signature?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And Defendant's Exhibit Number 8, books, it's</p> <p>9 got the number of books, number 14. Is that</p> <p>10 your signature?</p> <p>11 A. Yes, sir. Those are my initials.</p> <p>12 Q. And is the number 14 yours as well or did</p> <p>13 somebody else write that in?</p> <p>14 A. Somebody else wrote 14.</p> <p>15 Q. And do you remember if you signed Defendant's</p> <p>16 Exhibit 8 on March 3rd or did you sign it on</p> <p>17 March 7th?</p> <p>18 A. I'm going to guess and say I signed it on the</p> <p>19 7th.</p> <p>20 Q. The same day would be your best guess?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Do you remember what you received as book number</p> <p>23 14?</p>
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<p>1 A. I don't remember specifically what it applies</p> <p>2 to. But, yes, it has the number 14.</p> <p>3 Q. And to the left of that are initials. Do you</p> <p>4 know whose initials those are?</p> <p>5 A. On Exhibit Number 7 or which one are we on right</p> <p>6 now?</p> <p>7 Q. Yeah. Look to the right of where you signed.</p> <p>8 A. Right here?</p> <p>9 Q. Yeah. In fact, let's look -- look at your</p> <p>10 signature. It's got Gerald Stephens, 3/7/06, at</p> <p>11 something.</p> <p>12 A. Yes, sir. On the day I signed this form, it was</p> <p>13 March 7, 2006 at 0850 hours, at 8:50 a.m., that</p> <p>14 morning.</p> <p>15 Q. You signed it on March 7 rather than March 6?</p> <p>16 A. Yes, sir.</p> <p>17 Q. I'm sorry. March 3.</p> <p>18 Why did you sign it on March 7?</p> <p>19 A. It had to be when I was on duty that day. That</p> <p>20 would be the only reason.</p> <p>21 Q. And then continuing on, it's got, looks like,</p> <p>22 ZZZ. It looks like numbers to me. Are those</p> <p>23 your initials?</p>	<p>1 A. I received a couple of books when I would</p> <p>2 receive my material. I can't remember which</p> <p>3 ones they were and the titles of them, but I do</p> <p>4 recall them being some sort of essential or</p> <p>5 another in reference to firefighting.</p> <p>6 Q. Essential?</p> <p>7 A. Yes, sir.</p> <p>8 (Defendant's Exhibit 9 marked for</p> <p>9 identification.)</p> <p>10 Q. Let me show you what I'm going to mark as</p> <p>11 Defendant's Exhibit Number 9. I apologize. Is</p> <p>12 that your application for the promotion to</p> <p>13 battalion chief?</p> <p>14 A. Yes, sir. That's it.</p> <p>15 Q. And what day did you fill that out or sign it?</p> <p>16 A. I signed it on February 20, 2006, on a Monday.</p> <p>17 Q. Now, between the orientation session, which was</p> <p>18 February 28 of '06, and your signing for the</p> <p>19 books on March 7, 2006, do you recall anything</p> <p>20 during that period of time that occurred in</p> <p>21 relation to the battalion chief promotion?</p> <p>22 A. I don't recall anything, Mr. Morgan.</p> <p>23 Q. Did you discuss with any of the people who had</p>

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1 been involved in the orientation -- Lee, Steve,  
 2 Stephanie, the CWH representative, or Chief  
 3 Langley -- did you have any discussions with  
 4 them up until the time you received your books  
 5 on March 7? Anything about the procedure or the  
 6 test or any conversations with any of those  
 7 people?  
 8 A. No, sir, I don't recall.  
 9 Q. How about the folks that you've sued in this  
 10 case -- other people that you've sued: Bill  
 11 Ham, Bill James, Charles Duggan? Did you have  
 12 any conversations with any of them --  
 13 A. No, sir.  
 14 Q. -- up until March 7 about the test or how it  
 15 would be administered? Anything to do with the  
 16 test?  
 17 A. No, sir.  
 18 Q. Do you recall where you were when you received  
 19 the -- signed the form and received the books?  
 20 A. As I stated, Mr. Morgan, I think I was on duty  
 21 that day.  
 22 Q. Did somebody bring you the books and the form?  
 23 A. No, sir. I had to go to the public safety

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1 office to Chief Lamar's office.  
 2 Q. And was Chief Lamar there?  
 3 A. Yes, sir.  
 4 Q. Did you have any conversations with him when you  
 5 signed about the test or books?  
 6 A. No, sir.  
 7 Q. Just said I'm here and signed it?  
 8 A. Yes, sir.  
 9 Q. So you had the letter from, I guess, Lee Lamar  
 10 telling you that the written test was going to  
 11 be on a certain day. I think it was April 10 or  
 12 whatever is in the letter.  
 13 A. Yes, sir.  
 14 Q. And you had the books that you had received from  
 15 the City, and you had your orientation booklet.  
 16 Y'all got to keep these orientation booklets,  
 17 didn't you, Defendant's Exhibit 5?  
 18 A. I don't think we got to keep these. I'm not  
 19 real sure on that.  
 20 Q. But you are sure you got to keep the books or at  
 21 least --  
 22 A. Oh, yes. Most definitely, sir.  
 23 Q. Is there anything of any significance that

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1 occurred in relation to the promotion procedure  
 2 from the time you received your books on March 7  
 3 up until the time you start taking the written  
 4 test, which I think is April 10?  
 5 A. Can you repeat the first part? It slipped my  
 6 mind. I'm sorry.  
 7 Q. You received the books on March 7 at Deputy --  
 8 at that time -- Lee Lamar's office, and I think  
 9 the test began April 10. Anything of any  
 10 significance between that time period that  
 11 relates to the promotion procedure? Did  
 12 anything occur during that time period?  
 13 A. Not that I can recall, sir.  
 14 Q. Did you have any conversations with Lee or Larry  
 15 Langley or Steve Reeves or Stephanie up until  
 16 you start taking the written test on April 10?  
 17 A. No, sir.  
 18 Q. Other than what may have occurred at the  
 19 orientation?  
 20 A. No, sir.  
 21 Q. And you never had any conversations up to that  
 22 time with the mayor or Charles Duggan or Steve  
 23 Reeves?

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1 A. No, sir.  
 2 Q. The mayor, Bill James, and Charles Duggan, you  
 3 didn't have any conversations with them up to  
 4 April 10 about the test in any fashion, true?  
 5 A. No, sir. True.  
 6 Q. Tell me what you did to study and prepare for  
 7 the test.  
 8 A. Being the time I had to study all that  
 9 material -- First of all, I reviewed all the  
 10 material that was available. And I took it upon  
 11 myself to just study areas where I thought to be  
 12 important. Like I say, we didn't have that much  
 13 time or I don't think we had enough time to  
 14 actually study all the material that was  
 15 available. So I took it upon myself to apply  
 16 myself to areas where I thought I needed to  
 17 study and work on to prepare or be ready for  
 18 this test. And that was just the way I was  
 19 thinking about it, Mr. Morgan.  
 20 Q. Did you have study groups? Firefighters get  
 21 together and have study groups?  
 22 A. I did not.  
 23 Q. You did not?

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<p>1 A. No, sir.</p> <p>2 Q. How many study books did you have?</p> <p>3 A. I can't remember the exact number, but three to</p> <p>4 four books.</p> <p>5 Q. Did you have to turn those back in?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did you make any complaint to anybody before you</p> <p>8 sat down for the written test that you didn't</p> <p>9 have enough time to study?</p> <p>10 A. Anybody as in ...</p> <p>11 Q. Lee Lamar.</p> <p>12 A. The one person that I did talk about in the</p> <p>13 study time and all that, he's in this room</p> <p>14 now and that's Mr. Ogletree.</p> <p>15 Q. You had those conversations with Mr. Ogletree?</p> <p>16 A. Yes, sir. I told him just what I thought about</p> <p>17 the time span and the material that was</p> <p>18 available to study, and I told him what I</p> <p>19 thought about it.</p> <p>20 Q. Well, I'm going to get to that. Let me go</p> <p>21 through my little list.</p> <p>22 You didn't have any conversations with Larry</p> <p>23 Langley complaining about the time you had to</p>	<p>1 not asking you questions about Cortez Lawrence</p> <p>2 because I'm understanding from your answers he</p> <p>3 didn't have anything to do with this. Is that a</p> <p>4 fair statement?</p> <p>5 A. To my knowledge he don't. I don't know nothing</p> <p>6 about that.</p> <p>7 Q. What conversations did you have with Eddie</p> <p>8 Ogletree about the time span?</p> <p>9 A. Basically I notified him and just asked him, you</p> <p>10 know, basically his opinion on the material that</p> <p>11 was presented and the time we had on it. And I</p> <p>12 just basically told him that I don't see where I</p> <p>13 think I would be able to cover all this, you</p> <p>14 know, in the time we had available. It was a</p> <p>15 lot of material. It was a lot to read. Plus,</p> <p>16 you know, the other information that I chose to</p> <p>17 pursue and study that I thought would be liable</p> <p>18 (sic) for the test, I studied that as well,</p> <p>19 stuff like SOP books, personnel policies, City</p> <p>20 personnel policies -- I'm sorry -- in</p> <p>21 conjunction with the material that was given for</p> <p>22 the actual test.</p> <p>23 Q. So in addition to the books that you were told</p>
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<p>1 study, did you?</p> <p>2 A. Larry Langley, no.</p> <p>3 Q. No conversations with Lee Lamar about the period</p> <p>4 of time for study, did you?</p> <p>5 A. Mr. Lamar, no.</p> <p>6 Q. No conversations with Bill Ham about the period</p> <p>7 of time you had to study?</p> <p>8 A. Mayor Ham, no.</p> <p>9 Q. No conversation with Steve Reeves about the</p> <p>10 period of time you had to study?</p> <p>11 A. Mr. Reeves, no.</p> <p>12 Q. No conversations with Bill James about the</p> <p>13 period of time you had to study?</p> <p>14 A. Mr. James, no.</p> <p>15 Q. No conversations with Charles Duggan about the</p> <p>16 time you had to -- period of time you had to</p> <p>17 study?</p> <p>18 A. Charles Duggan, no.</p> <p>19 Q. And none with Stephanie King?</p> <p>20 A. Ms. King, no.</p> <p>21 Q. And none with any representative of CWH?</p> <p>22 A. No representatives, no.</p> <p>23 Q. And so you and I will be together on this, I'm</p>	<p>1 were the recommended reading for the test, you</p> <p>2 studied the fire department SOPs and you studied</p> <p>3 the personnel policies?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Now, did anybody recommend or suggest that you</p> <p>6 study the SOPs for the battalion chief test?</p> <p>7 A. Nobody recommended it to me, sir.</p> <p>8 Q. Did anybody recommend or suggest that you study</p> <p>9 the personnel policies for this battalion chief</p> <p>10 test?</p> <p>11 A. No, sir. Nobody recommended it to me.</p> <p>12 Q. Any other sources that you studied or reviewed</p> <p>13 for the battalion chief test, now, that weren't</p> <p>14 on the recommended reading list, the books you</p> <p>15 were given by the City, other than the SOPs and</p> <p>16 personnel policies?</p> <p>17 A. No, sir. Those are the only outside two</p> <p>18 resources I studied in conjunction with what was</p> <p>19 given to me.</p> <p>20 Q. And other than the fact that you received your</p> <p>21 reading material on March 7 rather than March 3,</p> <p>22 did any of the other firefighters or candidates</p> <p>23 for this promotion have any additional period of</p>



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1 time to study than you did?  
 2 A. I'm not aware of that, sir.  
 3 Q. As far as we can tell from the documentation  
 4 that I've presented to you today, everybody  
 5 would have received the reading material on or  
 6 about March 3; is that true?  
 7 A. Yes, sir, on or about.  
 8 Q. So the length of time would have been the same  
 9 for black applicants, white applicants,  
 10 lieutenant applicants, team leader lieutenant  
 11 applicants, firefighter applicants? Everybody  
 12 would have had the same time period. Is that a  
 13 fair statement?  
 14 A. Give or take one or two days depending on how  
 15 the shift ran. Yes, sir, that's a true  
 16 statement.  
 17 Q. You make a reference in your complaint to test  
 18 aids. What did you consider to be the test aids  
 19 for the battalion chief promotion process?  
 20 A. Could you be a little bit more specific about  
 21 this?  
 22 Q. I'll show you what I'm talking about.  
 23 A. Okay.

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1 Q. Paragraph 18. You have on here -- I've  
 2 highlighted it. Caucasian applicants for the  
 3 position were given preferential treatment  
 4 regarding the application process, test aids,  
 5 and test grades.  
 6 Do you see that in your complaint?  
 7 A. Yes, sir.  
 8 Q. What are the test aids that you're referring  
 9 to? What did you consider to be the test aids  
 10 for this promotion?  
 11 A. I can't recall that, Mr. Morgan.  
 12 Q. Well, let me ask this. You testified about an  
 13 orientation.  
 14 A. Yes, sir.  
 15 Q. And you testified about receiving the books.  
 16 A. Yes, sir.  
 17 Q. Do you have knowledge of any white applicants  
 18 for this position with battalion chief that  
 19 received anything else that would help them on  
 20 this test other than attending the orientation  
 21 and reviewing the books that everyone was  
 22 given? Anything else that you know of that  
 23 white applicants received that you didn't

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1 receive?  
 2 A. I'm not aware, Mr. Morgan. I haven't been  
 3 introduced with that.  
 4 Q. Do you know any white applicant who was given  
 5 preferential treatment in the application  
 6 process?  
 7 A. I don't recall that, Mr. Morgan. It don't ring  
 8 a bell.  
 9 Q. Do you know any white applicant who was given  
 10 preferential treatment in terms of test aids?  
 11 A. Never presented to me, Mr. Morgan. I'm not  
 12 aware of that.  
 13 Q. I assume that you continued your regular shift  
 14 work -- shift hours during the process when you  
 15 were studying for the battalion chief promotion  
 16 procedure.  
 17 A. Yes, sir.  
 18 Q. Did you take any time off to study?  
 19 A. That I recall, none, sir. If it was any, it  
 20 would have been how our Kelly days fall or  
 21 something like that. But I don't recall taking  
 22 off any significant shift during that process.  
 23 Q. Did you apply for any or request any leave time

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1 that you were denied during that period of time?  
 2 A. I don't recall anything of that nature, sir.  
 3 Q. Did you have your lawn service going on at that  
 4 time?  
 5 A. No, sir.  
 6 Q. When did you say you started the lawn service?  
 7 A. May of 2006.  
 8 Q. Did you do any preparatory work for that?  
 9 A. Basically I waited until everything was over  
 10 with the battalion chief promotion before I even  
 11 thought about starting a business. So no, sir,  
 12 I didn't do anything.  
 13 Q. How is that business set up? Is it a d/b/a or a  
 14 corporation?  
 15 A. D/b/a.  
 16 Q. And who does your books?  
 17 A. My wife. She has accounting resources  
 18 knowledge, stuff like that.  
 19 Q. And do you have -- I guess for tax purposes you  
 20 keep your records on purchasing equipment --  
 21 A. Yes, sir.  
 22 Q. -- advertising, if you do any advertising --  
 23 A. Yes, sir.

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<p>1 Q. -- and all that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. So if I needed to request that information, you</p> <p>4 would have that from the beginning of the time</p> <p>5 when you started your business?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Is that a fair statement?</p> <p>8 A. Yes, sir.</p> <p>9 Q. I always get confused with firefighters and</p> <p>10 their shifts. In March of '06, where were you</p> <p>11 assigned?</p> <p>12 A. I was on A shift. Chief Brown was my immediate</p> <p>13 supervisor.</p> <p>14 Q. What station?</p> <p>15 A. Station 3, if I remember correctly.</p> <p>16 Q. And what are the hours or days that A shift</p> <p>17 works in a week?</p> <p>18 A. Well, each shift works a 24-hour shift. So we</p> <p>19 work from 0700 to 07 the following morning for a</p> <p>20 total of 24. Then we're off for 48 hours</p> <p>21 whereas overall we work one day and be off two</p> <p>22 days.</p> <p>23 Q. And you maintained that same shift during the</p>	<p>1 A. Yes, sir. I concentrated heavily on the area</p> <p>2 where I thought I was weak in.</p> <p>3 Q. What day of the week was the test given? Do you</p> <p>4 recall?</p> <p>5 A. No. I don't recall what day it was, sir.</p> <p>6 Q. And didn't we decide, or at least I decided, it</p> <p>7 was April 10?</p> <p>8 A. Yes, sir. April 10.</p> <p>9 Q. And do you remember what time it started?</p> <p>10 A. It was stated that it started at 8:30, but I</p> <p>11 don't know if it started on time, a little bit</p> <p>12 before or a little bit after. I'm not sure on</p> <p>13 that. I don't recall.</p> <p>14 Q. Was there a sign-in sheet?</p> <p>15 A. Yes, sir, I do recall a sign-in sheet.</p> <p>16 Q. And would you -- I say you. I mean all the</p> <p>17 applicants. Were you given a booklet to take?</p> <p>18 How was the written test? What was the written</p> <p>19 test?</p> <p>20 A. If I'm remembering correctly, through the whole</p> <p>21 process we came in and signed in. And, of</p> <p>22 course, all the tables and chairs were set up</p> <p>23 and spaced evenly from each candidate. And</p>
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<p>1 time that you would have been preparing for the</p> <p>2 test?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Work one day and off two days?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Anything that you did to prepare for the test</p> <p>7 other than review the SOPs, personnel policies,</p> <p>8 and those portions of the study books which you</p> <p>9 thought were going to be important? Anything</p> <p>10 else that you did in preparation for the test?</p> <p>11 A. That's about all I did, sir.</p> <p>12 Q. Did you read completely any of the study aid</p> <p>13 books?</p> <p>14 A. Like I said earlier, Mr. Morgan, I reviewed the</p> <p>15 material that was given to me. In the areas</p> <p>16 where I felt strong on, I didn't spend as much</p> <p>17 time as on the areas that I felt weak on. So it</p> <p>18 was give and take throughout the study guides --</p> <p>19 study information.</p> <p>20 Q. So is it fair to say, then, the answer to my</p> <p>21 question is: You didn't read the whole book.</p> <p>22 You read the parts you thought were going to</p> <p>23 help you with your strengths taking the test?</p>	<p>1 sometime or another a booklet was presented -- a</p> <p>2 sealed booklet -- that we had to open at the</p> <p>3 time we started the actual test.</p> <p>4 Q. How did you identify -- Did you write in the</p> <p>5 test booklet or was there a separate answer</p> <p>6 sheet?</p> <p>7 A. I don't recall exactly what it was, but I think</p> <p>8 we wrote in the test booklet. But I don't</p> <p>9 recall. I just can't remember.</p> <p>10 Q. Did you put your name on your test booklet or a</p> <p>11 number? How was that to identify --</p> <p>12 A. There was a number, and somewhere you did have</p> <p>13 to put your name.</p> <p>14 Q. And how long was the test?</p> <p>15 A. We was allowed so many hours to take the test.</p> <p>16 If I'm thinking correctly, it was three hours.</p> <p>17 And it took me approximately two, two hours and</p> <p>18 fifteen minutes, two hours and a half to take</p> <p>19 it. I wasn't the last person in the room when I</p> <p>20 left. I'll put it like that. So I didn't take</p> <p>21 up the whole three hours.</p> <p>22 Q. Who was present to monitor or proctor the test?</p> <p>23 Who was there to hand it out and make sure --</p>

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1 A. I think I recall Mr. Lamar being there. I  
 2 vaguely saw Mr. Langley there. I can't remember  
 3 who else may have been there, Mr. Morgan. I'm  
 4 sorry.  
 5 Q. Do you remember if Steve Reeves was there?  
 6 A. I don't remember.  
 7 Q. How about Stephanie?  
 8 A. I don't remember.  
 9 Q. Do you remember any representative from CWH?  
 10 A. I don't recall anybody from CWH.  
 11 Q. From the time of the orientation on February 28  
 12 up until the time you start taking the test on  
 13 April 10, did you have any further conversations  
 14 or participate in any further discussions with  
 15 anybody from CWH about the test?  
 16 A. No.  
 17 Q. During this three-hour test, were you allowed to  
 18 take breaks if you needed to?  
 19 A. I don't remember. All I do remember is I didn't  
 20 take one. I didn't take a break.  
 21 Q. How many questions were there?  
 22 A. I don't remember, sir.  
 23 Q. Was it a multiple choice, fill-in-the-blank?

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1 How were the questions and answers?  
 2 A. If I remember correctly, it was multiple  
 3 choice.  
 4 Q. Were they divided up into any divisions or areas  
 5 such as supervision, fire scene, or was it just  
 6 a straight series of questions?  
 7 A. That I recall, it was a straight series of  
 8 questions.  
 9 Q. And did the questions appear to be related to  
 10 fire work?  
 11 A. They appeared to be related to the field of fire  
 12 profession, yes.  
 13 Q. Were there questions on there that appeared to  
 14 be related to supervisory roles?  
 15 A. I recall there being some questions, yes, sir.  
 16 Q. Did you think that the questions related to what  
 17 a battalion chief would do in the city of  
 18 Auburn?  
 19 MR. HORSLEY: Object to the form. You  
 20 can answer.  
 21 A. I don't think -- I think several of the  
 22 questions on that test had nothing to do with  
 23 Auburn and the way we do things at Auburn. To

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1 me those questions were something in reference  
 2 to a larger municipality bigger than us.  
 3 Q. Do you remember the specific questions?  
 4 A. No, sir, I don't.  
 5 Q. How many questions were there like that that you  
 6 thought related to a larger municipality?  
 7 A. It was the majority of the questions of the  
 8 test. I don't recall the exact number or how  
 9 many apply to that, but I know it was several  
 10 questions on there that I just didn't think  
 11 pertained to the way we do things in Auburn, to  
 12 the rules we go by, regulations.  
 13 Q. What exactly is your familiarity with the  
 14 responsibilities and duties of the battalion  
 15 chief?  
 16 A. Being that I filled the role in the absence of a  
 17 battalion chief, I'm very familiar with the  
 18 things they do.  
 19 Q. What does a battalion chief do differently from  
 20 what a lieutenant does?  
 21 A. Basically in a nutshell, the battalion chief is  
 22 responsible for the entire shift and also  
 23 responsible for the operations of the City in

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1 reference to life, safety, and fire protection  
 2 during that shift.  
 3 Q. Did you make any complaints to anyone during the  
 4 testing process --  
 5 A. No, sir, I did not.  
 6 Q. -- that you didn't think the test was related to  
 7 what went on at Auburn?  
 8 A. No, sir, I did not.  
 9 Q. After the test was completed, usually folks talk  
 10 about the test, what they thought about it. Do  
 11 you remember anybody making any comments in any  
 12 kind of meetings like that that they thought the  
 13 test did not address what a battalion chief did  
 14 at the City of Auburn?  
 15 A. Nobody spoke to me about anything of the test  
 16 afterwards, Mr. Morgan, and nor did I speak to  
 17 anybody about it.  
 18 Q. How did you think you had done on the test?  
 19 A. I didn't know what to think to be honest with  
 20 you, Mr. Morgan.  
 21 Q. Although you can't remember specific questions,  
 22 was there some general area of the test that you  
 23 thought didn't relate to what went on at Auburn

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<p>1 that you could give me some examples so I could</p> <p>2 kind of understand what you're talking about?</p> <p>3 A. I can't remember specifically, Mr. Morgan. If I</p> <p>4 had to guess, it had to be something on the</p> <p>5 guidelines of --</p> <p>6 MR. HORSLEY: Don't guess. Just tell</p> <p>7 him what you remember.</p> <p>8 A. I don't remember. I just don't remember.</p> <p>9 Q. Who was the first person to finish the test? Do</p> <p>10 you remember?</p> <p>11 A. If I recall, it was Christopher Turner.</p> <p>12 Mr. Turner.</p> <p>13 Q. And there were still people in there when you</p> <p>14 completed it?</p> <p>15 A. Yes, sir, there was still people in there.</p> <p>16 (Defendant's Exhibit 10 marked for</p> <p>17 identification.)</p> <p>18 Q. Let me show you what I'm marking as Defendant's</p> <p>19 Exhibit 10. This is a letter to you dated April</p> <p>20 4, a feedback letter, feedback report. Do you</p> <p>21 remember receiving that?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Did you make a request for this report or did</p>	<p>1 (Defendant's Exhibit 11 marked for</p> <p>2 identification.)</p> <p>3 Q. (Continuing by Mr. Morgan) I have a letter,</p> <p>4 which I will show you, Defendant's Exhibit</p> <p>5 Number 11, and it is an official notification</p> <p>6 that you didn't make 70 or whatever the magic</p> <p>7 number was on the written test. And then I've</p> <p>8 given you Defendant's Exhibit Number 10, which</p> <p>9 is the feedback report. Okay?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And I didn't pick up on it, but as Richard</p> <p>12 pointed out, the year is incorrect on the Number</p> <p>13 10. It should be 2006.</p> <p>14 A. Yes, sir.</p> <p>15 Q. My question to you is --</p> <p>16 MR. HORSLEY: Just for the record, the</p> <p>17 date is wrong, too, because it</p> <p>18 predates the test.</p> <p>19 MR. MORGAN: What is the date?</p> <p>20 MR. HORSLEY: April 4.</p> <p>21 MR. MORGAN: The whole date is wrong?</p> <p>22 MR. HORSLEY: The whole thing --</p> <p>23 THE WITNESS: Everything is improper.</p>
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<p>1 this report just come to you without you having</p> <p>2 requested it?</p> <p>3 A. If I recall I requested this.</p> <p>4 Q. Did you do that in writing or --</p> <p>5 A. I did it in writing.</p> <p>6 Q. What did the -- I may have it, but I can't find</p> <p>7 it.</p> <p>8 In what way did you request it, just that</p> <p>9 you would like an opportunity to look at it</p> <p>10 or --</p> <p>11 A. That I recall, this was done during the</p> <p>12 grievance procedure that we initiated, me and</p> <p>13 three other guys. Three other guys initiated a</p> <p>14 grievance after the results of the test, if I'm</p> <p>15 thinking correctly.</p> <p>16 MR. HORSLEY: Off the record.</p> <p>17 (Brief off-the-record discussion.)</p> <p>18 MR. HORSLEY: For the record, this</p> <p>19 letter is dated April 4, 2005,</p> <p>20 which would appear to be before</p> <p>21 the test was given.</p> <p>22 MR. MORGAN: Let me take one second.</p> <p>23 (Brief recess.)</p>	<p>1 Q. Which did you receive first, 10 or 11?</p> <p>2 A. I received 11 first. I did.</p> <p>3 Q. And that's dated April --</p> <p>4 A. 14th, 2006.</p> <p>5 Q. And that's the one telling you that you did</p> <p>6 not -- Let me show you one other document.</p> <p>7 (Defendant's Exhibit 12 marked for</p> <p>8 identification.)</p> <p>9 Q. Now, that is a document which appears to be the</p> <p>10 grievance complaining about the test, true?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And it's dated April 21, 2006?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Using that as a frame of reference, did you</p> <p>15 receive the report -- feedback report before or</p> <p>16 after you filed the grievance?</p> <p>17 A. Now, for starters, Exhibit 11, that's the first</p> <p>18 thing I received after the test.</p> <p>19 Q. And let me ask you this. Did that come to you</p> <p>20 in the mail or was it hand-delivered?</p> <p>21 A. I recall it coming in the mail, Mr. Morgan.</p> <p>22 Q. All right.</p> <p>23 A. And as far as this feedback, the only thing that</p>

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1 I have received, Mr. Morgan, as far as feedback  
 2 is when I requested it. That's the only thing I  
 3 can recall me receiving, any feedback, because  
 4 nothing was made to me directly, but people  
 5 complained about the test, one person in  
 6 particular, whereas some questions were thrown  
 7 out during the testing period.  
 8 Q. Who is the one --  
 9 A. Joey Darby.  
 10 And through the rumor mill, I understand  
 11 that's how he managed to make the cut to go  
 12 through the remaining of the promotion  
 13 procedures.  
 14 Q. Because questions were thrown out?  
 15 A. That was deemed -- That shouldn't have been  
 16 there of some sort. It was presented to  
 17 whomever was in power to make that decision.  
 18 And I do recall Joey Darby being one of those to  
 19 pursue that.  
 20 Q. Do you recall there being any others?  
 21 A. I don't. I don't recall anyone else.  
 22 Q. Well, I'm not saying this is true, but assume  
 23 what you said is true, that questions were

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1 thrown out for Joey Darby. Would those  
 2 questions have been thrown out for everybody or  
 3 just for Joey Darby?  
 4 A. The whole process.  
 5 Q. That question for everybody was thrown out?  
 6 A. It was removed, null and void, pointblank.  
 7 Q. So if you missed those same questions that Joey  
 8 Darby missed and that question was thrown out,  
 9 then that helped your score?  
 10 A. Apparently so. It did.  
 11 Q. Do you recall if you requested that feedback in  
 12 writing or just asked somebody verbally to send  
 13 the feedback report?  
 14 A. As I stated earlier, Mr. Morgan, it was done in  
 15 writing. And right here on Exhibit 12, it will  
 16 show where we asked that four written exams be  
 17 reviewed. And what I received was this  
 18 feedback.  
 19 Q. So you're thinking that your written request for  
 20 that was in Exhibit 12, the grievance thing?  
 21 A. Yes, sir.  
 22 Q. So when that grievance is filed -- My  
 23 understanding is Exhibit 12 is the first step in

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1 the grievance procedure.  
 2 A. It appears that this is, yes, sir.  
 3 Q. You, of course, had been informed that you did  
 4 not pass by that time?  
 5 A. Yes, sir. The first thing I received was my  
 6 letter of response saying what I made on the  
 7 test. That's the first thing I received.  
 8 Q. And is it your testimony that when you filed  
 9 that grievance that you had heard rumors that  
 10 Joey Darby had test questions thrown out?  
 11 A. Well, Joey Darby didn't have them thrown out.  
 12 He questioned those -- I guess he pursued those  
 13 questions because we was -- they mentioned  
 14 somewhere -- I'm trying to remember -- if a  
 15 question was on the test that didn't appear to  
 16 be in reference to -- I can't remember how they  
 17 worded it, but I know there was some questions  
 18 on that test challenged.  
 19 Q. Well, did you challenge any test -- any --  
 20 A. Any questions? No, sir, I didn't.  
 21 Q. But from what I understand your testimony to be,  
 22 the rumor was that Joey Darby challenged some  
 23 questions?

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1 A. Yes, sir. If I'm thinking correctly, yes, sir.  
 2 Q. And the rumor was that some of the questions  
 3 that Joey Darby challenged were thrown out. Is  
 4 that what the rumor was?  
 5 A. Yes, sir, if I'm thinking correctly.  
 6 Q. And you don't know whether or not the questions  
 7 he challenged affected your grade or not. Is  
 8 that a fair statement?  
 9 A. I don't know which questions it was that he  
 10 challenged, and therefore I don't know if it  
 11 will help me or hurt me or whatever.  
 12 Q. Is it your understanding that the feedback  
 13 report was only prepared or presented to the  
 14 four people who signed the grievance as opposed  
 15 to everyone who took the test receiving a  
 16 feedback report?  
 17 A. Like I said earlier, Mr. Morgan, I didn't  
 18 receive -- the first thing I received was the  
 19 letter that I received showing my score. After  
 20 that me and the other guys filed a grievance,  
 21 and then after that I received the feedback  
 22 report based on the request that I made.  
 23 Q. That's what my question is. Is it your



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<p>1 understanding that you received the feedback</p> <p>2 report because you requested it when you filed</p> <p>3 for the grievance?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have an understanding as to whether, for</p> <p>6 instance, Rodney Hartsfield received a feedback</p> <p>7 report? Do you know one way or the other</p> <p>8 whether he did?</p> <p>9 A. I don't know if he did or not, sir.</p> <p>10 Q. The only thing you can say that you think is</p> <p>11 that because you complained and requested it,</p> <p>12 you received it, and you don't know whether</p> <p>13 other people received it as a matter of course</p> <p>14 or not?</p> <p>15 A. Just like right here on Exhibit 10, this was</p> <p>16 addressed to me, and I know what I asked for.</p> <p>17 Q. Have you ever discussed it with Joey Darby about</p> <p>18 test questions being thrown out or what he</p> <p>19 objected to or anything?</p> <p>20 A. No, sir, I didn't.</p> <p>21 Q. Have you heard of any other applicants that</p> <p>22 complained about the test questions other than</p> <p>23 Joey Darby?</p>	<p>1 with CWH?</p> <p>2 A. No, sir, I did not.</p> <p>3 Q. And then you and three others filed a grievance</p> <p>4 to Lee Lamar, and you asked that four written</p> <p>5 exams be reviewed. I assume that's the four of</p> <p>6 you, your written exams?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Now, Horace Clanton is a white male?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And Robbie Hodge is a white male?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Eddie Ogletree is a black male?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And Gerald Stephens is a black male?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And the four of y'all filed this grievance</p> <p>17 together?</p> <p>18 A. We initiated that grievance together.</p> <p>19 Q. And when you actually had the hearing, though,</p> <p>20 how many of you went forward with the hearing?</p> <p>21 A. It was three of us.</p> <p>22 Q. Who did not go forward?</p> <p>23 A. Robbie Hodge.</p>
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<p>1 A. Like I say, it was just word of mouth, rumor</p> <p>2 mill, and I'm not sure on that. I don't recall.</p> <p>3 Q. The only name you recall is Joey Darby?</p> <p>4 A. That's the only name I recall hearing in</p> <p>5 reference to.</p> <p>6 Q. What's the date of the letter that told you you</p> <p>7 didn't -- April 14?</p> <p>8 A. Uh-huh (positive response).</p> <p>9 Q. And the grievance was filed April 21.</p> <p>10 In between receiving the letter, Defendant's</p> <p>11 Exhibit Number 11, telling you that you were</p> <p>12 not -- hadn't made high enough on the written</p> <p>13 and filing this grievance, Defendant's Exhibit</p> <p>14 12 on April 21, did you have any conversations</p> <p>15 with Lee Lamar or Larry Langley about the test?</p> <p>16 A. I didn't, sir.</p> <p>17 Q. Did you have any conversations with Steve Reeves</p> <p>18 or Bill James?</p> <p>19 A. No, sir, I did not.</p> <p>20 Q. Have any conversations with the mayor or the</p> <p>21 city manager about it?</p> <p>22 A. No, sir, I did not.</p> <p>23 Q. How about WCH? Did you have any conversations</p>	<p>1 Q. In this letter y'all say about exercising your</p> <p>2 rights for a grievance on a promotion procedure,</p> <p>3 which includes the following: The written exam.</p> <p>4 What was your complaint about the written</p> <p>5 exam at that point?</p> <p>6 A. In reference to this grievance as a group,</p> <p>7 everybody had their specific complaint. And the</p> <p>8 only thing I can tell you about that is the last</p> <p>9 one, inconsistency of past promotional</p> <p>10 procedures. That was my main complaint.</p> <p>11 Q. So did you have a complaint yourself about the</p> <p>12 written exam as part of this grievance</p> <p>13 procedure?</p> <p>14 MR. HORSLEY: What was that question</p> <p>15 again? I'm sorry.</p> <p>16 MR. MORGAN: He said --</p> <p>17 Q. As I understand what you said, the four of y'all</p> <p>18 may have each had your own separate complaints,</p> <p>19 true?</p> <p>20 A. Pretty much so, yes, sir.</p> <p>21 Q. The one that you were most complaining about was</p> <p>22 the inconsistency of past promotional</p> <p>23 procedures?</p>

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1 A. Yes, sir.  
 2 Q. My question is: As part of the grievance  
 3 procedure, was one of your complaints or did you  
 4 have a complaint about the written exam?  
 5 A. The thing about inconsistency of past  
 6 promotional procedures, it involves the written  
 7 exam because for the simple fact there have  
 8 never been one. That's my main thing. That's  
 9 part of my inconsistency, because when I took --  
 10 if I can explain --  
 11 MR. HORSLEY: Yeah.  
 12 A. When I took my promotional assessment in '96,  
 13 there was no written test. Anything after that  
 14 that I recall within a ten-year time span, there  
 15 was no written test.  
 16 Q. Let me ask the question this way. I'm going to  
 17 get to the inconsistency and let you explain  
 18 that in detail, but I want to go through these  
 19 other three.  
 20 What I'm hearing you say -- you tell me if  
 21 I'm wrong -- is that your complaint about the  
 22 written exam is that it was a requirement.  
 23 A. Basically the written exam was part of the

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1 procedure, yes.  
 2 Q. You didn't make any specific complaints about  
 3 the exam per se but just the fact that it was  
 4 now a part of the promotion procedure?  
 5 A. Yes, sir.  
 6 Q. And did you have as part of your complaint the  
 7 no time in grade policy? Was that something  
 8 that concerned you?  
 9 A. Not directly, sir.  
 10 Q. And then the -- I don't even understand this  
 11 one -- no accumulative point system, was that  
 12 one of your concerns?  
 13 A. That was a minor concern because --  
 14 Q. What is that?  
 15 A. Basically accumulative points is something  
 16 that's implemented into the overall assessment  
 17 whereas if --  
 18 Q. Back up.  
 19 A. Let's say, for example, if you had four years of  
 20 service, you get two points for that. If you  
 21 had a degree, you get eight points for that, you  
 22 know. To the point -- The point I'm trying to  
 23 get at is: At the end of the testing, all your

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1 points are added up, and that's how you get a  
 2 result, like I got on my result from when I was  
 3 promoted stating how I ranked and here was my  
 4 score.  
 5 Q. So you thought there should be some accumulative  
 6 point system into the system, either seniority  
 7 or education or something?  
 8 A. Yes, sir. I think it should have been one --  
 9 some type of point system, yes, sir. Whether  
 10 there was or not, I don't know, because I didn't  
 11 make it past the written test portion for  
 12 battalion chief.  
 13 Q. Well, tell me how you would have fashioned the  
 14 test for battalion chief.  
 15 MR. HORSLEY: Object to the form. You  
 16 can answer.  
 17 A. I'm not an expert on test making, Mr. Morgan, so  
 18 I can't really say what I would do and what I  
 19 would do would be the correct thing to do. But  
 20 I just -- I just -- I'm not an expert in that  
 21 field. I just don't know.  
 22 Q. And then your number four complaint -- I think  
 23 this is the one that you said most concerned

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1 you -- was the inconsistency of past promotional  
 2 procedures.  
 3 A. Yes, sir.  
 4 Q. Elaborate and tell me exactly what it is that  
 5 concerned you about that one.  
 6 A. The thing that concerned me was that, of course,  
 7 I went through an assessment center. Some  
 8 people promoted and, whether it was lieutenant  
 9 or team leader, went through structured  
 10 interviews. Some people was appointed. And  
 11 some people were just, in my terms, vaguely  
 12 given a job.  
 13 Q. Just what, now?  
 14 A. Vaguely given the job and told them that you are  
 15 in this position. And when I say that, the job  
 16 position wasn't posted.  
 17 Q. So --  
 18 A. So that's what I mean by inconsistency.  
 19 Q. I guess what I'm understanding you to say -- and  
 20 once again, you correct me -- is that people had  
 21 achieved a rank in different ways.  
 22 A. Yes, sir.  
 23 Q. Who was appointed as opposed to going through

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<p>1 the structured interview with the team leader or</p> <p>2 the assessment as lieutenant? Who was appointed</p> <p>3 to a position that sat for the battalion chief</p> <p>4 promotion?</p> <p>5 A. I do recall Rodney Hartsfield, who is a</p> <p>6 battalion chief now, being promoted when he was</p> <p>7 on probation as a career firefighter. I don't</p> <p>8 have any specifics on the date or nothing like</p> <p>9 that.</p> <p>10 Q. Promoted to what?</p> <p>11 A. He was promoted to a team leader.</p> <p>12 Q. While he was a probationary career firefighter?</p> <p>13 A. Yes.</p> <p>14 Q. Well, I don't know either. I mean, the</p> <p>15 documents will say whatever they say, but was</p> <p>16 there always -- other than Rodney Hartsfield's</p> <p>17 promotion, was there always a requirement for</p> <p>18 promotion to team leader that you had to be a</p> <p>19 non-probationary career firefighter?</p> <p>20 A. Like I say, Mr. Morgan, I was not a team leader,</p> <p>21 but I know there was requirements for me when I</p> <p>22 applied for lieutenant.</p> <p>23 Q. So you don't know whether or not the</p>	<p>1 Q. Anybody else who you think in the fire</p> <p>2 department received a promotion where they were</p> <p>3 vaguely given a job that was not posted other</p> <p>4 than Lee Lamar?</p> <p>5 A. Well, vaguely given a job, I don't know, but I</p> <p>6 recall another incidence where a promotion took</p> <p>7 place. They went from firefighter to captain</p> <p>8 whereas they skipped other rank.</p> <p>9 Q. And that's Larry Langley?</p> <p>10 A. And that's Larry Langley.</p> <p>11 Q. Once again, do you know whether or not on that</p> <p>12 promotion there was a requirement for a time in</p> <p>13 grade or that you had to be a lieutenant?</p> <p>14 A. The only thing I know is what I applied for,</p> <p>15 Mr. Morgan, and that was lieutenant.</p> <p>16 Q. And that would have been the captain promotion</p> <p>17 that occurred in 1996, true?</p> <p>18 A. No, sir. It was in -- In 1996 I think</p> <p>19 Mr. Langley was on his way to being acting fire</p> <p>20 chief.</p> <p>21 Q. So Langley was promoted to captain even before</p> <p>22 '96?</p> <p>23 A. Yes, sir.</p>
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<p>1 non-probationary versus probationary was ever a</p> <p>2 requirement for team leader?</p> <p>3 A. Well, I mean, it was practiced, but whether or</p> <p>4 not it was a direct requirement, I can't tell</p> <p>5 you. Like I say, I was never a team leader.</p> <p>6 Q. And then the last category was people who were</p> <p>7 vaguely given the jobs that were not posted.</p> <p>8 Who sat for the battalion chief position that</p> <p>9 was vaguely given a job that was not posted?</p> <p>10 A. Well, nobody sat for the position of battalion</p> <p>11 chief. Basically he had something to do with</p> <p>12 presenting in the -- the testing orientation or</p> <p>13 whatever. And what I'm speaking about in</p> <p>14 particular is that when they first implemented</p> <p>15 back the training officer position, it was never</p> <p>16 posted. I never saw anything in reference to.</p> <p>17 And the first time I heard about it was when my</p> <p>18 immediate supervisor told me, who is the late</p> <p>19 Jimmy Brown. He told me that the person who had</p> <p>20 stepped in and started acting as the training</p> <p>21 officer was the training officer.</p> <p>22 Q. Lee Lamar?</p> <p>23 A. Yes, sir.</p>	<p>1 Q. Do you remember what year he was promoted to</p> <p>2 captain?</p> <p>3 A. I don't remember off the top of my head,</p> <p>4 Mr. Morgan.</p> <p>5 Q. But your best recollection is it was sometime</p> <p>6 before '96?</p> <p>7 A. It was before '96.</p> <p>8 Q. All right. Now, you're going to have to help me</p> <p>9 here. You've taken your written test. You've</p> <p>10 told me about the procedure, what went on during</p> <p>11 that written test. And then I guess a couple of</p> <p>12 days later -- within a week I guess -- you get</p> <p>13 notice that you didn't score high enough to</p> <p>14 proceed. And then by April 21 you filed your</p> <p>15 grievance along with these other firefighters.</p> <p>16 I guess they were all lieutenants at that point.</p> <p>17 A. Yes, sir. We were all lieutenants.</p> <p>18 Q. And then you go through the grievance</p> <p>19 procedure. I've seen the paperwork where you go</p> <p>20 up -- the four of you go up the steps on the</p> <p>21 grievance procedure.</p> <p>22 A. Yes, sir.</p> <p>23 Q. Is there anything else going on at that time in</p>



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1 terms of complaints about the test,  
2 conversations with people, anything that's not  
3 documented in the grievance procedures?  
4 A. I don't recall of anything. I will say that I  
5 did converse with the guys that was on the  
6 grievance. Once we came together and decided to  
7 file a grievance, we discussed a lot of things.  
8 And it was with those guys that are on that  
9 paper right there.  
10 Q. What do you recall Horace Clanton's specific  
11 complaints being about the test or the  
12 procedure?  
13 A. Can I see that?  
14 Q. Yeah, sure.  
15 A. I can't remember, Mr. Morgan. I'm sorry. The  
16 only thing that I can consider to be my direct  
17 complaint was the inconsistency part in  
18 compliance (sic) with everything else. I mean,  
19 it was all of us conversing together. And we  
20 had our concerns, and all of it came together  
21 and we presented this together.  
22 Q. I just want to be sure I have this documented.  
23 Do you remember -- what was the other -- Not

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1 Eddie, but who was the other one?  
2 A. Mr. Robert Hodge.  
3 Q. Do you remember any specific complaints that he  
4 had?  
5 A. No, sir, I don't. I don't recall.  
6 Q. Do you remember any specific complaints that  
7 Eddie Ogletree had?  
8 A. Of the three that's available, no, sir. I don't  
9 recall.  
10 Q. I think this is Exhibit 10, the feedback  
11 report. When is your recollection that you  
12 received that, after you filed the grievance?  
13 A. Like I say, the only time I recall receiving  
14 this that is addressed to me is when I pretty  
15 much asked for a review. In reference to  
16 everybody else, I don't know. I'm just speaking  
17 as far as what I received that was addressed to  
18 me, because I think of the three of us -- of the  
19 four of us who did it, each one was addressed to  
20 each individual, I think. But I'm not clear on  
21 it. It's been so far along. But I can vouch  
22 for this one that's addressed to me.  
23 Q. Look at the second page of this document, and

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1 it's got down there reading source.  
2 A. Okay.  
3 Q. It's got four books -- I assume they are  
4 books -- listed: IFSTA Chief Officer, Effective  
5 Supervisory Practices, Fire Officers' Handbook  
6 of Tactics, and Structural Firefighting.  
7 Do you see those?  
8 A. Yes, sir.  
9 Q. Are those the four books that the City furnished  
10 you to review to prepare for the battalion chief  
11 exam?  
12 A. I think they are, sir.  
13 Q. And look at the next page on that. It says:  
14 Scoring Changes Based on Item Analysis. Do you  
15 see that?  
16 A. Yes, sir.  
17 Q. And it's got -- The first sentence says: At the  
18 time of the written test, all candidates were  
19 given the opportunity to appeal any item on the  
20 test they felt was inaccurate and unfair.  
21 And my understanding is that you did not  
22 appeal any of the test questions, true?  
23 A. No, sir, I didn't appeal any.

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1 Q. And then the second paragraph says: There were  
2 a total of seven items appealed, and the scoring  
3 key was adjusted for two of these items.  
4 Did you ever ask anyone at the City what  
5 that referred to or what that meant?  
6 A. I didn't, sir. No.  
7 Q. And so I can be clear, the rumor is that if test  
8 grades or scores had not been changed -- Let me  
9 start over.  
10 The rumor is if test question answers had  
11 not been changed that Joey Darby would not have  
12 scored high enough to have proceeded to the  
13 assessment part?  
14 A. Yes, sir.  
15 Q. But you don't know how that change affected your  
16 individual score, do you?  
17 A. Not directly, sir, no.  
18 Q. Tell me just generally what went on during the  
19 grievance appeal process.  
20 A. Basically what happened was after -- I was  
21 notified after the time I received the letter  
22 stating what I made on the test and I couldn't  
23 proceed. I was contacted by Mr. Clanton. He

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<p>1 asked me what I thought, and I told him that I'm</p> <p>2 concerned enough to file a grievance; what about</p> <p>3 you. And he say he felt the same way, and he</p> <p>4 had talked to Mr. Hodge and Mr. Ogletree.</p> <p>5 So we met and we initiated the first letter</p> <p>6 based upon the conversations we had and based on</p> <p>7 everything that we presented on this first</p> <p>8 letter. And we decided to present it to --</p> <p>9 Being that we was a station officer and middle</p> <p>10 management, we decided to present it to</p> <p>11 Mr. Lamar, who was deputy chief, because we each</p> <p>12 worked on -- well, some of us worked on</p> <p>13 different shifts. If I'm not mistaken, me and</p> <p>14 Mr. Clanton was on the same shift, and Eddie</p> <p>15 and -- Mr. Hodge and Mr. Ogletree was on the</p> <p>16 same shift. So we had different supervisor --</p> <p>17 immediate supervisors. So we addressed it to</p> <p>18 Mr. Lamar.</p> <p>19 Q. And I guess from there it goes to --</p> <p>20 A. Yes, sir. Just procedures that go through the</p> <p>21 chain of command.</p> <p>22 Q. And eventually you have a hearing?</p> <p>23 A. Yes, sir. When we reach the city manager, it's</p>	<p>1 subject of your earlier EEOC complaint --</p> <p>2 A. Yes, sir.</p> <p>3 Q. -- that he took a temporary position as</p> <p>4 something?</p> <p>5 A. Yes, sir. He was appointed as acting A shift</p> <p>6 officer in place of the late Chief Brown.</p> <p>7 That's when he had undergone -- initially found</p> <p>8 out and undergone his health issues at the time</p> <p>9 and was not capable of work. So our shift was</p> <p>10 without an immediate supervisor when this</p> <p>11 happened, but I was the acting. I was filling</p> <p>12 that role prior to him being appointed because I</p> <p>13 was the one who broke the news to every other</p> <p>14 officer on the shift, the situation with Chief</p> <p>15 Brown.</p> <p>16 Q. But my question is: That's the person you were</p> <p>17 complaining about that got to be the temporary,</p> <p>18 I guess, captain or battalion chief and you</p> <p>19 thought it should have been you?</p> <p>20 A. Yes, sir. That was my main complaint to</p> <p>21 Mr. Langley who made the appointment: Why</p> <p>22 Mr. Clanton when I wasn't given an opportunity.</p> <p>23 Q. Did you have an attorney representing you at the</p>
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<p>1 his decision to grant us a hearing of his</p> <p>2 choice, you know, as far as the hearing</p> <p>3 officer. And it's set up, and that's when we go</p> <p>4 into the hearing procedure part of the</p> <p>5 grievance.</p> <p>6 Q. And that was before Judge Bailey came in?</p> <p>7 A. No. That was when Judge Bailey came. He was</p> <p>8 the hearing officer.</p> <p>9 Q. He was the hearing officer. That's what I</p> <p>10 asked. Okay.</p> <p>11 And Hodge decided not to go forward with the</p> <p>12 hearing?</p> <p>13 A. Yes, sir. During the process of when we</p> <p>14 addressed Chief Lamar and, if I'm remember</p> <p>15 correctly, when addressed -- when we was</p> <p>16 preparing to address Mr. James, public safety</p> <p>17 director, he told myself and Mr. Clanton that he</p> <p>18 did not want to pursue any further. And, of</p> <p>19 course, we respected that and told him we</p> <p>20 appreciated what he had done. And Mr. Clanton</p> <p>21 and myself and Mr. Ogletree, we're still</p> <p>22 proceeding.</p> <p>23 Q. Clanton, is that the officer that had been the</p>	<p>1 hearing?</p> <p>2 A. No, sir. Well, let's back up. Which one, the</p> <p>3 one in 2005 or 2006?</p> <p>4 Q. The one dealing with the battalion chief.</p> <p>5 A. Me, Mr. Ogletree, and Mr. Clanton? No, sir, we</p> <p>6 didn't have a lawyer at that time.</p> <p>7 Q. Was there an attorney on the other side for the</p> <p>8 City or was it just --</p> <p>9 A. No, sir. We just came into the hearing as we</p> <p>10 were.</p> <p>11 Q. Who was the City's spokesperson?</p> <p>12 A. The City spokesperson?</p> <p>13 Q. Who was the one that defended the City's</p> <p>14 position?</p> <p>15 A. Basically Judge Bailey. I mean, that's who we</p> <p>16 talked to.</p> <p>17 Q. Lee Lamar wasn't there?</p> <p>18 A. Mr. Lamar was there and Mr. Reeves was there,</p> <p>19 but, you know, we -- our conversation pretty</p> <p>20 much was through Mr. Bailey.</p> <p>21 Q. Well, I understand that. Was there somebody</p> <p>22 from the City who then had a conversation with</p> <p>23 Mr. Bailey as to what the City's position was?</p>

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1 A. I guess there was between those other people  
2 that were present, yes, sir.  
3 Q. Anybody you remember being there besides Lee and  
4 Steve Reeves?  
5 A. I can't remember if Mr. Langley was there or  
6 not, but I do know Mr. Lamar and Mr. Reeves was  
7 there.  
8 Q. And Judge Bailey --  
9 A. And Judge Bailey, of course. He was the hearing  
10 officer.  
11 Q. He ruled against y'all?  
12 A. Yes, sir.  
13 Q. Did you have any witnesses or was it just the  
14 three of you?  
15 A. It was just us three.  
16 Q. Do you know Rodney Hartsfield?  
17 A. I do.  
18 Q. Have you ever worked with him?  
19 A. I do.  
20 Q. Is he --  
21 A. I have.  
22 Q. Is he a good officer?  
23 A. I can't say if he's good or not, but the times I

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1 worked with Rodney Hartsfield, he was an  
2 insubordinate (sic) to me. I mean, he worked  
3 under my leadership.  
4 Q. He wasn't insubordinate. He was subordinate.  
5 A. He was subordinate, yes, sir. He was either a  
6 student firefighter, career firefighter, or a  
7 team leader. As far as him being a battalion  
8 chief, I don't recall working for him ever since  
9 he's been in that position. I may have worked  
10 overtime a couple of hours till they can get  
11 somebody in at shift change, but not a 24-hour  
12 shift. No, sir.  
13 Q. Do you have an opinion as to whether or not he  
14 is qualified or not qualified to be a battalion  
15 chief?  
16 MR. HORSLEY: Object to the form. You  
17 can answer.  
18 A. I don't have an opinion on that, Mr. Morgan.  
19 Q. And Joe Lovvorn, have you worked with him?  
20 A. Yes, sir. Same as I have with Rodney  
21 Hartsfield.  
22 Q. Was he a good, competent officer when you worked  
23 with him?

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1 A. I mean --  
2 Q. Have any complaints about him?  
3 A. I never worked under his leadership as a  
4 battalion chief. It was always the same  
5 description as was for Rodney Hartsfield.  
6 Q. Do you have any opinion as to whether he is or  
7 is not qualified to be a battalion chief?  
8 MR. HORSLEY: Object to the form.  
9 A. I don't have an opinion, sir.  
10 Q. And Matt Jordan --  
11 A. Yes, sir.  
12 MR. HORSLEY: Same objection.  
13 Q. Have you ever worked for Matt Jordan?  
14 MR. HORSLEY: I'm sorry. I thought he  
15 was asking the same question.  
16 A. I have worked for Chief Jordan. He was -- When  
17 he was promoted, he was my -- he was put on my  
18 shift, or our shift, as my immediate supervisor.  
19 Q. And do you have an opinion on whether or not he  
20 is or is not qualified to be a battalion chief?  
21 MR. HORSLEY: Object to the form. You  
22 can answer.  
23 A. I don't have an opinion whether he's qualified

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1 or not, but I do know I had some problems with  
2 him in reference to the grievance that I  
3 initiated. And that goes back to when I was at  
4 Station 5.  
5 Q. You told me about that grievance?  
6 A. Yes, sir.  
7 Q. I don't know that he's one of the people that  
8 y'all referred to, but I think Joey Darby has  
9 been promoted to battalion chief as well now.  
10 A. Joey Darby was promoted to battalion chief to  
11 replace Chief Brown when he retired.  
12 Q. Do you have an opinion of whether or not Joey  
13 Darby is qualified or not qualified to be a  
14 battalion chief?  
15 MR. HORSLEY: Object to the form. You  
16 can answer.  
17 A. I don't have an opinion on that, sir.  
18 Q. Do you have an opinion on whether or not you are  
19 more qualified than Rodney Hartsfield to be a  
20 battalion chief?  
21 MR. HORSLEY: Object to the form. You  
22 can answer.  
23 A. I do have an opinion on that.

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<p>1 Q. What is that opinion?</p> <p>2 A. Considering that I was an officer when he</p> <p>3 started working there, I taught him in rookie</p> <p>4 school, and, I mean, I trained him through the</p> <p>5 training procedures that took place or</p> <p>6 whatever. All these guys who are battalion</p> <p>7 chiefs now, they came in after me.</p> <p>8 Q. I want to be sure I get all your answers so</p> <p>9 let's kind of take our time on this.</p> <p>10 A. Yes, sir.</p> <p>11 Q. What I'm understanding you to say about Rodney</p> <p>12 Hartsfield as to why you think you're more</p> <p>13 qualified is that you were an officer when he</p> <p>14 was hired and you participated in his training,</p> <p>15 right?</p> <p>16 A. (Witness nods head positively.)</p> <p>17 Q. Any other reasons why you think you're more</p> <p>18 qualified than Rodney Hartsfield?</p> <p>19 MR. HORSLEY: Object to the form.</p> <p>20 A. More years of experience level. I have more</p> <p>21 years of experience. Spent more time on the</p> <p>22 job. Has played a significant role or did play</p> <p>23 a significant role in the growth of the</p>	<p>1 Chief Brown.</p> <p>2 Q. Do you know whether or not Rodney Hartsfield</p> <p>3 ever filled in --</p> <p>4 A. I don't know. Me and him was not on the same</p> <p>5 shift.</p> <p>6 Q. Do you know whether or not as a team leader</p> <p>7 Rodney Hartsfield had stepped up and filled in</p> <p>8 as a lieutenant?</p> <p>9 A. I'm not sure on that, Mr. Morgan.</p> <p>10 Q. Have we covered everything about Rodney</p> <p>11 Hartsfield as to why you think you're more</p> <p>12 qualified?</p> <p>13 A. I think we touched the basis of it, sir, the</p> <p>14 most important part.</p> <p>15 Q. And Joe Lovvorn, do you think you're more</p> <p>16 qualified than Joe Lovvorn to be a battalion</p> <p>17 chief?</p> <p>18 MR. HORSLEY: Object to the form.</p> <p>19 Q. What are the reasons?</p> <p>20 A. Pretty much the same reasons that I mentioned</p> <p>21 with Rodney Hartsfield.</p> <p>22 Q. Been there longer?</p> <p>23 A. Yes, sir.</p>
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<p>1 department, you know, during the era when they</p> <p>2 was actually coming in and being hired. I just</p> <p>3 think I have more experience than any of those</p> <p>4 guys at the Auburn Fire Division.</p> <p>5 And one other thing: I mentioned it later</p> <p>6 on. During their absence, you know, I filled</p> <p>7 that position. And I filled that position</p> <p>8 before they even became, you know, battalion</p> <p>9 chiefs. I filled the position in the absence of</p> <p>10 a battalion chief.</p> <p>11 Q. If a battalion chief --</p> <p>12 A. And I still do it.</p> <p>13 Q. -- is not there, you as a lieutenant, step up --</p> <p>14 A. Yes, sir.</p> <p>15 Q. -- to that position?</p> <p>16 A. Yes, sir. Based upon seniority.</p> <p>17 MR. HORSLEY: And you said you had</p> <p>18 done that before the battalion</p> <p>19 chief promotion?</p> <p>20 THE WITNESS: Before and after.</p> <p>21 Q. You're talking about with other people who were</p> <p>22 battalion chiefs?</p> <p>23 A. Yes, sir. I've filled in several times for</p>	<p>1 Q. And Matt Jordan. Do you think you're more</p> <p>2 qualified than Matt Jordan?</p> <p>3 MR. HORSLEY: Object to the form.</p> <p>4 Q. What are the reasons?</p> <p>5 A. Same reasons. Understand, Mr. Morgan, all these</p> <p>6 guys came in right along the same era, one or</p> <p>7 two years, give or take. And when they came in,</p> <p>8 I was a officer already.</p> <p>9 Q. And then Joey Darby. You think you're more</p> <p>10 qualified than Joey Darby --</p> <p>11 A. Yes, sir.</p> <p>12 Q. -- to be a battalion chief?</p> <p>13 MR. HORSLEY: Object to the form.</p> <p>14 A. Yes, sir.</p> <p>15 Q. Same reasons?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Any different reasons for any of them other than</p> <p>18 what you've already expressed?</p> <p>19 A. Not at this time, sir.</p> <p>20 Q. There's a reference in this lawsuit -- Well, let</p> <p>21 me get to that.</p> <p>22 MR. MORGAN: Let's take a quick break.</p> <p>23 (Brief recess.)</p>

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1 Q. (Continuing by Mr. Morgan) Look at these four  
2 books that were the reading source.  
3 Specifically I'm going to ask you about all of  
4 them, but specifically the supervisory --  
5 Effective Supervisory Practices. Hadn't you  
6 read that book earlier in some of your training  
7 courses for some of the certifications that you  
8 had received along the way in your career?  
9 A. Yes, sir. I recall having a lot to do  
10 resourcefully with this particular text, yes,  
11 sir.  
12 Q. How about the other three texts on there? Had  
13 you read or been exposed to any of them before  
14 the battalion chief promotion procedure?  
15 A. If it was any other, it had to be Structural  
16 Firefighting. That's throughout your whole  
17 career pretty much.  
18 Q. So a lot of this -- at least the material in  
19 those two books would not have been new material  
20 to you but really have been a review of stuff  
21 that you had learned along the way?  
22 A. Yes, sir. I can agree with that.  
23 Q. Let me ask some specifics about your complaint.

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1 In Count I --  
2 (Brief pause.)  
3 Q. Look at paragraph 15, if you would, first  
4 sentence. It says: Prior to February 2007,  
5 only nine probationary lieutenants were allowed  
6 to apply for the position of battalion chief.  
7 Actually, isn't it true that there actually  
8 had never been a promotion for battalion chief  
9 before this? Isn't that true?  
10 A. No.  
11 MR. HORSLEY: And, for the record,  
12 that date is wrong too. It should  
13 be 2006. I'm sorry about that.  
14 That was my fault.  
15 A. The first incident involving battalion chiefs  
16 was a change from captain to battalion chief.  
17 That was the title change coordinated and worked  
18 through the person in position to make that  
19 decision.  
20 Q. So this is actually the first promotion to  
21 battalion chief?  
22 A. Yes, sir.  
23 Q. The prior promotion had been to captain in '96?

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1 A. Yes, sir.  
2 Q. And I think you testified, but I want to be  
3 clear. You don't remember whether or not  
4 non-probationary people were allowed to apply  
5 for captain in '96 because you weren't concerned  
6 with that. You were concerned with your own  
7 promotion procedure.  
8 A. Yes, sir. For the record, there were two people  
9 applying for captain in '96 when I was applying  
10 for lieutenant, and it was Mr. Lamar and  
11 Mr. Johnny Lawrence. Those were the two  
12 candidates for captains in 1996.  
13 Q. And were either of them promoted?  
14 A. Chief Lawrence -- Mr. Lawrence was promoted to  
15 captain.  
16 Q. Had he been a lieutenant?  
17 A. He was a team leader.  
18 Q. So then prior to February 2006, this is not  
19 correct. Only non-probationary -- Unless you're  
20 counting team leaders as being lieutenants in  
21 '96. As a team leader, he was allowed to apply  
22 for promotion to captain?  
23 A. Yes, sir, he was.

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1 Q. And was promoted?  
2 A. Yes, sir.  
3 Q. And then you've got in February of '06, the City  
4 changed its policy to allow non-probationary and  
5 probationary firefighters to apply for battalion  
6 chief.  
7 And I think cutting through all that, what  
8 we've established is the only person who was not  
9 a team leader, lieutenant, or lieutenant (sic)  
10 who sat for the written test for battalion chief  
11 was Chris Turner, a black male?  
12 A. Chris Turner. Give or take Clay Carson.  
13 Q. And I think you said he didn't take the test.  
14 A. No, sir, he did not.  
15 Q. The only one that took the test was Chris?  
16 A. Yes, sir. Mr. Turner.  
17 Q. Black male. All right.  
18 Look at number 16, the next page. It says:  
19 During the time the City changed the policy to  
20 require applicants for battalion chief to pass a  
21 written test.  
22 Obviously there was a written test. What's  
23 the problem with the written test?



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<p>1 MR. HORSLEY: Object to the form. Go 2 ahead. 3 A. My problem with that is that there have never 4 been a written test, Mr. Morgan. It was 5 always -- It was either assessment center or a 6 structured interview. And regardless which one 7 it was, there was not a written test for a 8 promotion to that rank. 9 Q. Well, say that's true. Say that's true. Why 10 does that make it wrong to change the procedure 11 to include a written test? 12 MR. HORSLEY: Object to the form. 13 Q. I know you don't like the fact that you didn't 14 do well on the written test. But aside from 15 that, looking at the big picture, what's wrong 16 with the City including a written test as part 17 of the promotion procedure? 18 MR. HORSLEY: Object to the form. Go 19 ahead. 20 A. I'm not in the position to say whether it's 21 right or wrong with the City implementing 22 anything. I can only speak from the point that 23 through my 17 years of being there or up to the</p>	<p>1 series of questions we want to ask you. Please 2 respond to the best of your ability. Let us 3 know when you're done, and that's it. 4 Q. Does assessment center involve more than just 5 questions and answers? 6 A. It could, depending on what type of promotion it 7 is. The ones where I conducted myself as an 8 assessor in a neighboring department, yes, it 9 did. But in Auburn all the scenarios in 1996 10 was inside a building, and it was just different 11 scenarios dealing with different broad areas 12 that you're going to be exposed to as an 13 officer. 14 Q. The assessment center that you participated in 15 for lieutenant, was that a question-and-answer 16 system? 17 A. A portion of it was, yes, sir. 18 Q. Was there more than just questions and answers? 19 A. Yes, sir. We had role plays. We had an 20 in-basket scenario. We had scenarios where we 21 were actually videotaped. I can't remember if 22 we did an interview or not. I'm not sure. 23 Q. Look at the second sentence of paragraph 16. It</p>
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<p>1 point where I became an officer and on up until 2 the time of this first battalion chief 3 promotion, there was never a written test. What 4 is right or wrong for the City to do, I'm not at 5 any liberty or at any power to justify that. 6 Q. And that makes me want to back up a minute. 7 You took the assessment center or 8 participated in that for lieutenant. 9 A. Yes, sir. 10 Q. You sat on what you've called structured 11 interviews for team leader. 12 A. Yes, sir. 13 Q. What's the difference between the two? What was 14 different as an assessment as opposed to the 15 structured interview? 16 A. I consider assessment center very thorough where 17 it covers all broadness of the position. I 18 mean, from exercises in reference to medical 19 calls, pumping, driving, having good 20 conversational skills with the public, in 21 general. That's an assessment center. A 22 structured interview for a team leader, you come 23 in a room and you sit down and okay, we have a</p>	<p>1 says: Coincidentally the policy changes 2 occurred when two African-American lieutenants 3 and one entry-level African-American 4 firefighter -- 5 I assume that's Chris Turner. 6 A. Yes. 7 Q. -- became eligible for the position. 8 What's coincidental about that? 9 MR. HORSLEY: Object to the form. You 10 can answer. 11 A. Coincidentally, you know, we applied for the 12 positions. We became eligible and we applied. 13 And all of a sudden, you know, things changed. 14 Things changed to the point where, you know, we 15 had to take a test. Why not stick to the way 16 we've been doing things? 17 Q. Do you have any evidence that that change 18 occurred to exclude African-Americans from being 19 promoted to battalion chief? 20 MR. HORSLEY: Object to the form. 21 A. I don't know if it was applied or not, sir. I 22 don't know. But I know this. It just 23 coincidentally happened that way to the point</p>

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1 where it hasn't happened in the past.  
2 Q. And the last sentence of that paragraph says:  
3 Seniority within the division was discarded as a  
4 criteria for promotion to the battalion chief  
5 position.  
6 Do you recall one way or the other whether  
7 or not in '96 for the last captain's promotion  
8 seniority was a requirement?  
9 A. I don't know if it was a requirement, but it was  
10 heavily considered.  
11 Q. And that's based on what?  
12 A. Based on time in grade, based on the number of  
13 years of experience, on the years you was --  
14 Q. My question is: Why do you say that was a  
15 requirement for captain in '96? Do you recall  
16 seniority being a requirement for captain?  
17 A. I don't recall that. I don't know, sir.  
18 Q. Look at paragraph 17. It says you were denied  
19 promotion to battalion chief in April 2006 and a  
20 temporary assignment in January of 2005.  
21 The 2005, is that the one where you filed  
22 the grievance and the EEOC charge dealing with  
23 Horace Clanton?

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1 A. Yes, sir.  
2 Q. And if I recall, no lawsuit was filed as a  
3 result of that?  
4 A. No, sir.  
5 Q. And then you said the denial of the promotion  
6 was racially based.  
7 What facts do you have that you're not being  
8 promoted to battalion chief was because of --  
9 was racially based?  
10 MR. HORSLEY: Object to the form.  
11 A. I can't think of no other reason why. I mean,  
12 I've done everything that the Auburn Fire  
13 Division asked me to do up until this point. I  
14 was actually running the position prior to him  
15 making that decision, and it had been practiced  
16 and exercised prior to this incident that the  
17 available lieutenants fill these positions.  
18 Prior to the opportunity coming to me,  
19 Mr. Langley's brother, who was a lieutenant of  
20 the department, every time they needed a  
21 position to take place, he was given the  
22 opportunity. And he had more seniority than  
23 me. And basically at one point, Mr. Langley

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1 told me -- Mr. Larry Langley told me that he has  
2 more seniority than you; he's a lieutenant. So  
3 I'm just following suit.  
4 Q. Wait. Now, he was a lieutenant?  
5 A. Terry Langley was a lieutenant. Terry Langley  
6 is Larry Langley's brother.  
7 Q. And what positions was he given that you weren't  
8 given?  
9 A. In the absence of a captain or battalion chief,  
10 he would fill that role and it was based on  
11 seniority.  
12 Q. I thought you testified that you had also filled  
13 that role as captain or battalion chief.  
14 A. When he left I did. When he retired in February  
15 of 2004, I was the only lieutenant left, and I  
16 started filling those positions when asked to do  
17 so. Lieutenant Langley, Terry Langley, would do  
18 it consecutively. He would get the assignment,  
19 and it would be his until told to do something  
20 else. I would do it randomly when guys take off  
21 and -- When they take off, I'll step in.  
22 Q. Well, assume all that is true. Why is it that  
23 you say -- How do you consider that to be

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1 evidence of racial discrimination in your not  
2 being promoted to battalion chief?  
3 A. What other reason would it be? I mean, I've  
4 done -- I'm qualified. I'm certified. I'm  
5 capable of doing the job. They make me do it  
6 anyway. So what other reason would it not be?  
7 That's the conclusion I was led to, and that's  
8 what I think.  
9 Q. Well, do you have any specific what you would  
10 consider evidence other than that's what you  
11 think?  
12 MR. HORSLEY: Object to the form. You  
13 can answer.  
14 A. Well, the only evidence I have, Mr. Morgan, is  
15 the day that the announcement was made and  
16 Mr. Clanton was asked to act as the A shift  
17 shift commander.  
18 Q. That was back in '05?  
19 A. Yes, sir.  
20 Q. Well, let's talk about February of '06 when you  
21 applied for battalion chief and then you didn't  
22 score high enough on the written test. What  
23 evidence do you have that you were denied

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<p>1 promotion on that occasion because of your race?</p> <p>2 MR. HORSLEY: Object to the form. You</p> <p>3 can answer.</p> <p>4 A. I don't recall anything at this time,</p> <p>5 Mr. Morgan.</p> <p>6 Q. Look at paragraph 18. I think we've been</p> <p>7 through this. You're not aware of any Caucasian</p> <p>8 applicants for battalion chief in February of</p> <p>9 '06 that were given preferential treatment in</p> <p>10 the application process, test aids, or test</p> <p>11 grades, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And in paragraph 19, it said: The City</p> <p>14 continues to violate a federal court order</p> <p>15 requiring them to alter hiring and promotion</p> <p>16 practices.</p> <p>17 First of all, you were hired in '94 as a</p> <p>18 black male, true?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And you had been hired earlier than that, I</p> <p>21 guess, in '91 as a student firefighter?</p> <p>22 A. Yes, sir.</p> <p>23 Q. What federal court order are you referring to</p>	<p>1 A. Oh, most definitely. I think I was hired</p> <p>2 because I was the man for the job. It has</p> <p>3 nothing to do with color.</p> <p>4 Q. That's right.</p> <p>5 Well, the court order that you're referring</p> <p>6 to is one that occurred before you were hired as</p> <p>7 a student firefighter as you understand it?</p> <p>8 A. I guess it was, Mr. Morgan. I don't -- well --</p> <p>9 Q. Have you ever read the court order?</p> <p>10 A. No, sir. I don't know nothing about it.</p> <p>11 Q. Well, is it fair to say that you really don't</p> <p>12 know -- can't give me any examples about how is</p> <p>13 it you claim that the City is violating the</p> <p>14 court order as to promotion policies?</p> <p>15 MR. HORSLEY: Object to the form. You</p> <p>16 can answer.</p> <p>17 A. All I know is that from previous lawsuits, there</p> <p>18 were stipulations set, guidelines set. And the</p> <p>19 City was to follow it in reference to the Auburn</p> <p>20 Fire Division.</p> <p>21 Q. And you got that understanding from Dean Garrett</p> <p>22 and Jessie Strickland?</p> <p>23 A. That's the first confirmation I got from it when</p>
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<p>1 and how is the City of Auburn violating it as it</p> <p>2 relates to promotion practices?</p> <p>3 A. When I was hired in 1994, I was informed -- my</p> <p>4 immediate supervisor when I went career was Dean</p> <p>5 Garrett. No. My shift commander was Dean</p> <p>6 Garrett. My immediate supervisor was a black</p> <p>7 male by the name of Jessie Strickland. And at</p> <p>8 the time, I didn't know anything about previous</p> <p>9 lawsuits or whatever. But it was at that time</p> <p>10 when they informed me that I was hired because I</p> <p>11 was black, and that was in the previous lawsuit.</p> <p>12 Q. Who told you that?</p> <p>13 A. This came from the officers when I went on shift</p> <p>14 as a career --</p> <p>15 Q. Jessie Strickland?</p> <p>16 A. It was Dean Garrett and Jessie Strickland</p> <p>17 present.</p> <p>18 Q. Told you you were hired because you were black?</p> <p>19 A. Yeah. Basically in a nutshell, that's what it</p> <p>20 was. And it was all contingent upon the lawsuit</p> <p>21 that they had where they was made to hire three</p> <p>22 African-Americans, three blacks.</p> <p>23 Q. You don't believe that, do you?</p>	<p>1 I became career.</p> <p>2 Q. Was from those two people?</p> <p>3 A. They were my immediate and shift supervisor.</p> <p>4 Q. And they are the same two people that told you</p> <p>5 you were hired because you were black?</p> <p>6 A. They pretty much told me.</p> <p>7 Q. And you don't believe that?</p> <p>8 A. No, sir.</p> <p>9 Q. Look at Count II, Retaliation. I think it's</p> <p>10 page 6. You've got here that the Plaintiffs</p> <p>11 have engaged in statutorily protected</p> <p>12 expressions, such as filing EEOC -- well, Equal</p> <p>13 Opportunity charges and grievances against the</p> <p>14 City.</p> <p>15 What do consider to be statutorily protected</p> <p>16 expressions?</p> <p>17 MR. HORSLEY: Object to the form.</p> <p>18 A. I guess -- Well, I don't want to guess about</p> <p>19 it. I want to be direct with it.</p> <p>20 MR. HORSLEY: If you don't know, don't</p> <p>21 try and answer.</p> <p>22 A. I don't know, Mr. Morgan.</p> <p>23 Q. Let me ask you, then. Do you claim in this</p>



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1 lawsuit that you were denied promotion to  
 2 battalion chief in retaliation for having filed  
 3 an earlier EEOC charge and grievances against  
 4 the City?  
 5 A. To my understanding, the reason why I didn't get  
 6 the opportunity to pursue the battalion chief  
 7 position is because I didn't pass the written  
 8 test. I don't understand to this day why it was  
 9 implemented as part as when in the past it never  
 10 has happened.  
 11 Q. You don't have any evidence that the reason you  
 12 weren't promoted is in retaliation for having  
 13 filed an EEOC charge or grievance, do you?  
 14 THE WITNESS: Can I talk to my  
 15 attorney for a minute?  
 16 MR. HORSLEY: All I can tell you is if  
 17 you don't know the answer to the  
 18 question, that needs to be your  
 19 answer.  
 20 A. I don't know the answer to that question,  
 21 Mr. Morgan.  
 22 Q. Your understanding is you didn't get promoted  
 23 because you didn't score high enough on the

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1 other than what you refer to in paragraph 30  
 2 being the EEOC charge and the grievances? Is  
 3 there anything else that you consider to be  
 4 protected expressions, if you consider them to  
 5 be, other than the EEOC charge and the  
 6 grievances, if you know one way or the other?  
 7 A. I don't know one way or the other, sir.  
 8 Q. Look at Count III. And the first question is --  
 9 In paragraph 34 in quotes, is the phrase  
 10 "built-in headwind for minority groups and  
 11 unrelated to measuring job capability".  
 12 What is a built-in headwind? What do you  
 13 understand that to be?  
 14 MR. HORSLEY: Object to the form. He  
 15 didn't draft the complaint.  
 16 MR. MORGAN: I understand.  
 17 A. I don't know, sir, at this point.  
 18 Q. Outside of this lawsuit and excluding any  
 19 conversations with your attorney, have you ever  
 20 heard of the phrase "built-in headwind" before?  
 21 A. I don't recall ever hearing anything of that  
 22 nature, sir.  
 23 Q. What is your understanding as to your claim that

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1 written test, true?  
 2 MR. HORSLEY: Object to the form.  
 3 THE WITNESS: Can I answer?  
 4 MR. HORSLEY: You can answer.  
 5 A. True.  
 6 Q. And as far as you know, the same written test  
 7 was given to everyone, blacks and whites?  
 8 A. As far as I know, sir, everyone that was present  
 9 got the same test.  
 10 Q. And you don't have any evidence or suspect that  
 11 the City sat around with anybody and said, hey,  
 12 let's make this test so that Gerald Stephens  
 13 can't pass it because we're mad at him for  
 14 filing an EEOC charge? You don't have any  
 15 evidence to that effect, do you?  
 16 MR. HORSLEY: Object to the form.  
 17 THE WITNESS: Can I answer?  
 18 MR. HORSLEY: Yeah.  
 19 A. No, sir, I don't have any evidence of that.  
 20 Q. In paragraph 31, you make reference to protected  
 21 expressions. Do you see that?  
 22 A. Yes.  
 23 Q. Do you include anything in protected expressions

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1 the promotion practice had a disparate impact?  
 2 In your terms, what does that mean?  
 3 MR. HORSLEY: Object to the form. You  
 4 can answer.  
 5 A. All I know, Mr. Morgan, is that as an employee  
 6 of the Auburn Fire Division being hired in 1994,  
 7 there have only been one person hired with the  
 8 division, African-American, as a career  
 9 firefighter, and that was a guy by the name of  
 10 Roderick Torbert.  
 11 Q. Who?  
 12 A. Roderick Torbert. And other than myself being  
 13 promoted in 1996, the only other person I know  
 14 that was promoted is Mr. Ogletree. Since then  
 15 no African-Americans have been promoted or  
 16 hired, and I know that there are  
 17 African-Americans out there who have applied and  
 18 who are qualified for those positions. I don't  
 19 know them directly. I don't know them  
 20 specifically, but I know some who have applied  
 21 for a promotion and for career firefighter  
 22 positions, and it's never happened.  
 23 Q. Let me kind of break that down because I want to

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1 be clear on it.  
 2 Is your complaint about a disparate impact  
 3 related to the hiring or non-hiring of blacks,  
 4 or is it related to the promotion or  
 5 non-promotion of blacks?  
 6 MR. HORSLEY: Object to the form.  
 7 A. Both. I'm concerned about both of those issues,  
 8 Mr. Morgan.  
 9 Q. So you think that the City's hiring practices  
 10 have a disparate impact on blacks?  
 11 A. Yes, sir.  
 12 Q. Tell me what you mean by a disparate impact on  
 13 blacks.  
 14 MR. HORSLEY: Object to the form. Go  
 15 ahead.  
 16 A. They haven't hired any, Mr. Morgan, or promoted  
 17 any, since 1996.  
 18 Q. And what do you mean by a disparate impact  
 19 against blacks on promotions?  
 20 MR. HORSLEY: Same objection. Go  
 21 ahead.  
 22 A. They haven't promoted any.  
 23 Q. In your opinion, just the fact that none have

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1 been hired is evidence of the disparate impact?  
 2 A. They have not hired or promoted qualified  
 3 African-Americans since 1996.  
 4 Q. And that's the basis of your disparate impact  
 5 claim?  
 6 A. Yes.  
 7 Q. How did you rate Chris Turner on the team leader  
 8 interviews?  
 9 A. I never sat on the interview with -- on the  
 10 board of an interview for Chris Turner. I've  
 11 never sat --  
 12 Q. For team leader you never sat on one that he  
 13 applied for?  
 14 A. No, sir, I never did.  
 15 Q. Was it your experience that the team leader  
 16 interviews that -- panels that you sat on always  
 17 included at least one and usually two blacks?  
 18 A. One if not two, yes, sir.  
 19 Q. Well, let's focus in on the promotion to  
 20 battalion chief which you applied for and did  
 21 not receive. What is there about that procedure  
 22 to battalion chief that you think had a  
 23 disparate impact on blacks?

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1 MR. HORSLEY: Object to the form. You  
 2 can answer.  
 3 A. When the four captains received their battalion  
 4 chief rank, it was done by a title change. No  
 5 test. No procedures. No structured interview.  
 6 No assessment center. I mean, nothing was set  
 7 in stone other than a title change until after  
 8 the fact when they decided to go this route  
 9 right here.  
 10 Q. This route meaning the test?  
 11 A. The test -- The written test and the cutoff  
 12 score and everything else that went along with  
 13 it that I didn't experience.  
 14 Q. Well, let's go back to the four captains.  
 15 A. Okay.  
 16 Q. Did anything occur in terms of their employment  
 17 other than they were renamed battalion chief  
 18 from captain?  
 19 A. No, sir.  
 20 Q. Did their duties and responsibilities remain the  
 21 same?  
 22 A. The only thing I say had something to do with  
 23 that is the actual growth of the city. I mean,

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1 the city is steadily growing. Responsibilities  
 2 are steadily increasing. Our job  
 3 responsibilities are, you know, growing more  
 4 than they have been in the past. And I guess --  
 5 Well, I won't guess about it.  
 6 Just the growth of the city, and they  
 7 thought maybe they needed a title change for  
 8 some reason or another, and they pursued it.  
 9 Q. Do you claim that the title change alone from  
 10 captain to battalion chief -- do you make a  
 11 claim that that had some sort of racial  
 12 discrimination or racially discriminatory effect  
 13 toward blacks, changing the name from captain to  
 14 battalion chief?  
 15 MR. HORSLEY: Object to the form.  
 16 A. I don't know what the reason was, Mr. Morgan. I  
 17 don't know the reason for pursuing it, the  
 18 reason for wanting to change it. I don't have a  
 19 clue.  
 20 Q. My question is: Do you consider that to be  
 21 somehow racially discriminatory, to change the  
 22 title from captain to battalion chief?  
 23 MR. HORSLEY: Object to the form. I

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1 think he's already answered the  
2 question.  
3 A. No, sir, I don't.  
4 Q. Now, in terms of the actual battalion chief  
5 promotion procedure that you were involved in,  
6 what is there about it that you think had a  
7 disparate impact on blacks?  
8 MR. HORSLEY: Object to the form. You  
9 can answer.  
10 A. Can you ask me that again, please, sir?  
11 Q. In terms of the battalion chief promotion  
12 process in which you participated, what is it  
13 about it that you think had a disparate impact  
14 on blacks?  
15 MR. HORSLEY: Object to the form.  
16 A. The written test.  
17 Q. What is there about the written test that you  
18 think had a disparate impact?  
19 MR. HORSLEY: Same objection. Go  
20 ahead.  
21 A. As stated before, Mr. Morgan, on previous  
22 incidents, the written test has never been an  
23 option in the promotion -- a written test with a

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1 cutoff score has never been part of the  
2 promotion procedure within the division.  
3 Q. And I don't want to keep on with this, but I  
4 want to be clear. Is it your position that just  
5 by giving a written test that the effect of that  
6 was to have a disparate impact on blacks?  
7 MR. HORSLEY: Object to the form. You  
8 can answer.  
9 A. I don't recall that at this time, Mr. Morgan.  
10 Q. What I probably should have done is ask this  
11 question first.  
12 What does disparate impact mean to you?  
13 What do the terms "disparate impact" mean to  
14 you?  
15 A. Basically it means to me that -- Let me see if I  
16 can come up with a specific --  
17 MR. HORSLEY: That's a legal question.  
18 A. No, sir.  
19 MR. HORSLEY: It's a legal term, and I  
20 don't want you answering questions  
21 like that.  
22 A. No, sir. I don't have any comment at this time.  
23 Q. I'm not asking a legal definition. I'm just

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1 asking what do you think it means.  
2 MR. HORSLEY: I don't want you trying  
3 to think up an answer.  
4 MR. MORGAN: No. Don't sit here and  
5 just answer it.  
6 Q. Do you know what disparate impact means one way  
7 or the other?  
8 A. No, sir. I don't have any comment at this time.  
9 Q. Before they became battalion chiefs, were those  
10 people that held that position captains or were  
11 they shift commanders?  
12 A. The title that I understand is shift  
13 commander/captain or shift commander/battalion  
14 chief. Captains or battalion chief are  
15 commanders like lieutenants are station  
16 officers.  
17 Q. So captains had become shift commanders which  
18 had become battalion chiefs?  
19 A. Captains are shift commanders and the title was  
20 changed to battalion chief.  
21 Q. All of which was just, as you understand it, a  
22 name change?  
23 A. Title change.

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1 Q. In the big picture, what do the battalion chiefs  
2 do?  
3 A. They are shift commanders. They oversee all  
4 operations per shift, including the firefighters  
5 that work under them in reference to the safety  
6 of the city, the whole -- Everything in  
7 reference to.  
8 Q. And there are four of them?  
9 A. Yes, sir, it is.  
10 Q. And does each one have a different area of  
11 responsibility?  
12 A. Each one of them carry out the same  
13 responsibilities. The responsibilities apply to  
14 each battalion chief, other than the one who is  
15 assigned to administrative duties.  
16 (Defendant's Exhibit 13 marked for  
17 identification.)  
18 Q. Let me show you Defendant's Exhibit 13 and ask  
19 you if you recognize this as the charge of  
20 discrimination when you submitted to the EEOC.  
21 Is that your charge of discrimination?  
22 A. Yes, sir.  
23 (Off-the-record discussion followed by

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<p>1 a brief recess.)</p> <p>2 Q. (Continuing by Mr. Morgan) Let me ask you about</p> <p>3 some of these folks on the witness list and</p> <p>4 specifically what they know about your case.</p> <p>5 William Thompkins, who is he and what does</p> <p>6 he know about your case?</p> <p>7 A. William Thompkins used to be employed with the</p> <p>8 student firefighter program. Of course, he's a</p> <p>9 black male. And Mr. Thompkins was terminated on</p> <p>10 a first offense of an incident that occurred</p> <p>11 between him and another temporary full-time</p> <p>12 employee, who is a PSO, Public Safety Officer.</p> <p>13 Why he was terminated on a first offense, I</p> <p>14 don't know, but he shouldn't have never been</p> <p>15 terminated.</p> <p>16 Q. And he's a black male?</p> <p>17 A. Yes, sir, he is.</p> <p>18 Q. When was he terminated?</p> <p>19 A. I don't remember, Mr. Morgan.</p> <p>20 Q. Well, does he know anything about you not being</p> <p>21 promoted to battalion chief?</p> <p>22 A. I don't know exactly what he knows, but he could</p> <p>23 have been told something of that nature. I</p>	<p>1 better, whatever. There were times when they've</p> <p>2 done things that, yes, they should have been</p> <p>3 fired on the first offense because it involved</p> <p>4 the police department. Police were notified.</p> <p>5 They were involved. They committed an act that</p> <p>6 I deem to be very serious. And if I was their</p> <p>7 immediate supervisor, I would have recommended</p> <p>8 that they be terminated.</p> <p>9 Q. And can you give me names of any of them?</p> <p>10 A. Michael Garrett Thee; a young man by the name of</p> <p>11 Hale -- last name Hale, H-A-L-E; a young man by</p> <p>12 the name of Graham -- last name Graham,</p> <p>13 G-R-A-H-A-M. That's just a few that come off</p> <p>14 the top of my head.</p> <p>15 Q. Who is Jeremy Patterson?</p> <p>16 A. He also is a black male, student firefighter</p> <p>17 program, or was.</p> <p>18 Q. And was he there when you applied for promotion</p> <p>19 to battalion chief?</p> <p>20 A. No, sir, he wasn't.</p> <p>21 Q. To your knowledge does he know anything about</p> <p>22 your case?</p> <p>23 A. I have talked to Mr. Patterson.</p>
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<p>1 don't know for sure.</p> <p>2 Q. Was he still employed with the City when you</p> <p>3 applied for battalion chief?</p> <p>4 A. I don't recall he was, sir.</p> <p>5 Q. Have you had any conversations with him about</p> <p>6 race discrimination?</p> <p>7 A. I haven't seen Thompkins in a long time.</p> <p>8 Q. Anything else that you have him listed for other</p> <p>9 than the fact that he was terminated on a first</p> <p>10 offense and you don't think he should have been</p> <p>11 terminated on a first offense?</p> <p>12 A. No, sir.</p> <p>13 Q. And do you know what that offense was?</p> <p>14 A. I really don't know. I don't know why they</p> <p>15 decided to do that.</p> <p>16 Q. Was he a firefighter?</p> <p>17 A. He was a student firefighter.</p> <p>18 Q. Well, let me ask you this. I'm not being</p> <p>19 disrespectful, but what business would it be of</p> <p>20 yours as to why he was terminated?</p> <p>21 A. Because I've seen other things happen with other</p> <p>22 student firefighters who were white, and they</p> <p>23 had multiple times to correct the problem, do</p>	<p>1 Q. And what has he told you?</p> <p>2 A. Basically he understand who the battalion chiefs</p> <p>3 were who were promoted, and he asked me on</p> <p>4 occasions how did that happen and what took</p> <p>5 place.</p> <p>6 Q. Well, does he have any evidence or give you any</p> <p>7 information or facts that you were not promoted</p> <p>8 because of your race?</p> <p>9 A. I don't recall that. I don't know.</p> <p>10 Q. Did he voluntarily leave the student firefighter</p> <p>11 program?</p> <p>12 A. He graduated from Auburn University and obtained</p> <p>13 another job, and -- I think he resigned and took</p> <p>14 on a new job and left the program.</p> <p>15 Q. So he stayed in the program. What is the up</p> <p>16 side to being in the student firefighter</p> <p>17 program? They pay for your college education?</p> <p>18 A. They do --</p> <p>19 Q. Room and board?</p> <p>20 A. They provide them a place to live. They have</p> <p>21 tuition reimbursement. Now they allow them to</p> <p>22 pay into the retirement program.</p> <p>23 Q. And then you have Chris Turner. What does Chris</p>

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1 Turner know about your complaint?

2 A. Chris Turner, of course, him and I went through

3 recruiting school together in '91 and have

4 pretty much worked our entire career together,

5 you know, per shift assignments.

6 Q. Well, do you know of any specific information he

7 has about you not being promoted?

8 A. Well, Chris Turner I think has been overlooked

9 several times on promotion himself; therefore,

10 he's witnessed other incidents to occur. What

11 his reasons are, I don't recall. But as I

12 stated, Chris Turner and I have pretty much

13 worked our career together.

14 Q. I guess I'm pronouncing this right. Marzella

15 Ogletree?

16 MR. OGLETREE: That's my wife.

17 Q. His wife. Do you know her?

18 A. I've seen her before, but I don't know her, no,

19 sir.

20 Q. And then your wife. What does your wife know

21 about your complaints or your lawsuit?

22 A. Basically what I've told her and shared with her

23 from what I received from my attorney.

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1 Q. She doesn't have any firsthand knowledge of what

2 goes on at the fire department, does she?

3 A. She don't work there, no, sir.

4 Q. Then you have Adelner Franklin Thomas, district

5 director, EEOC. What does -- I guess that's a

6 male. What does he know or she know?

7 A. I don't have -- I don't know of anything of

8 that, Mr. Morgan.

9 Q. You've got Doug Watkins, former city manager.

10 A. Yes, sir.

11 Q. What does he know about your battalion chief

12 promotion?

13 A. I don't know if he knows anything, Mr. Morgan,

14 but --

15 Q. He wasn't there at that time, was he?

16 A. He was the one who implemented or helped

17 implement the title change promotion, whatever

18 you want to call it, from captain to battalion

19 chief.

20 Q. Do you know specifically what he did in that

21 regard?

22 A. I don't know specifically what he did.

23 Q. Do you know of anything else that he's done in

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1 terms of the battalion chief position other than

2 his involvement in the title and name change?

3 A. I don't know of anything.

4 Q. And he was not present when you were -- went

5 through the process?

6 A. No, sir.

7 Q. And you've got Horace Clanton. He's one of

8 those that signed the grievance with you?

9 A. Yes, sir.

10 Q. In terms of racial discrimination, do you know

11 of any information or knowledge that Mr. Clanton

12 has about you and racial discrimination?

13 A. I don't know of anything, sir.

14 Q. Rodney Hartsfield?

15 A. I don't know of anything.

16 Q. And he was promoted to battalion chief.

17 And then you've got Michael -- Matthew

18 Jordan. Do you know of anything he knows about

19 you being racially discriminated against?

20 A. I don't know if he knows anything, sir.

21 Q. Joseph Lovvorn, do you know anything he knows

22 about your case, this lawsuit?

23 A. No, sir, I don't know if he knows anything.

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1 Q. Jason Brown, who is Jason Brown?

2 A. Jason Brown is a station officer, one of those

3 that -- one of the thirteen signatures on the

4 paperwork that allowed them to -- allowed them

5 the title change or promotion, whatever you want

6 to call it, to lieutenant.

7 Q. Is he a white male?

8 A. He is a white male.

9 Q. What, if anything, does he know about your

10 complaints in this lawsuit?

11 A. I don't know if he knows anything, Mr. Morgan.

12 Q. Did he sit for the promotion to battalion chief?

13 A. He did, sir.

14 Q. Did he make it to the top five?

15 A. I don't know, sir, if he did or not.

16 Q. Was he promoted to battalion chief?

17 A. No, sir, he was not.

18 Q. And then you've got Paden Payton. Is he the one

19 you told me about earlier with the hazing

20 incident?

21 A. Yes, sir.

22 Q. And when did he leave the City?

23 A. I can't remember the date right off, sir, but it



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<p>1 was within the last two years.</p> <p>2 Q. Was he still employed with the City when you</p> <p>3 went through the promotion procedure process for</p> <p>4 battalion chief?</p> <p>5 A. Yes, sir, he was.</p> <p>6 Q. Has he told you any information or knowledge he</p> <p>7 has about your lawsuit or your claims of racial</p> <p>8 discrimination?</p> <p>9 A. No, sir.</p> <p>10 Q. Then you've got the Auburn city council</p> <p>11 members. Have you discussed your case with any</p> <p>12 members of the Auburn city council?</p> <p>13 A. No, sir.</p> <p>14 Q. Do you know anything that the Auburn city</p> <p>15 council members know about your claim of racial</p> <p>16 discrimination?</p> <p>17 A. No, sir.</p> <p>18 Q. Joey Darby, do you know anything he knows about</p> <p>19 your case or why he's listed as a witness?</p> <p>20 A. I don't know anything that he knows.</p> <p>21 Q. Then you have Terry Walker. Who is Terry</p> <p>22 Walker?</p> <p>23 A. He is the former training officer -- training</p>	<p>1 observations of her involvement in this</p> <p>2 process. Anything that she knows or any other</p> <p>3 reason she would be listed as a witness other</p> <p>4 than her role in the assessment -- I mean, the</p> <p>5 orientation process?</p> <p>6 A. No, sir. I don't know of anything.</p> <p>7 Q. Have you ever had any conversations with her and</p> <p>8 complained about racial discrimination?</p> <p>9 A. No, sir.</p> <p>10 Q. Ever complained about the test to her?</p> <p>11 A. No, sir.</p> <p>12 Q. And you've got Joe Bailey, and I know you said</p> <p>13 he was the hearing officer.</p> <p>14 A. Yes, sir.</p> <p>15 Q. To your knowledge does he know anything else</p> <p>16 other than what he heard as the hearing officer?</p> <p>17 A. I don't know what else he have heard or knows or</p> <p>18 anything, Mr. Morgan.</p> <p>19 Q. Have you ever discussed your case with him?</p> <p>20 A. No, sir.</p> <p>21 Q. Michael Thee. Who is Michael Thee?</p> <p>22 A. Mr. Thee is a student firefighter of the Auburn</p> <p>23 Fire Division.</p>
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<p>1 chief who recently retired.</p> <p>2 Q. Do you know anything that he knows about your</p> <p>3 case?</p> <p>4 A. No, sir.</p> <p>5 Q. Do you know why he's listed as a witness?</p> <p>6 A. Don't have a clue.</p> <p>7 Q. Ronnie Blankenship, who is he?</p> <p>8 A. He was my first actual supervisor when I became</p> <p>9 a student. And to make a long story short, he</p> <p>10 was the fire chief up until '96-'97 --</p> <p>11 1996-1997. He went from team leader to fire</p> <p>12 chief, and then from fire chief he went on and</p> <p>13 retired and went elsewhere.</p> <p>14 Q. He left the City in '96 or '97?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you know anything that he knows about your</p> <p>17 claims of racial discrimination?</p> <p>18 A. I don't know if -- I don't know what he knows,</p> <p>19 Mr. Morgan.</p> <p>20 Q. But he hasn't been employed with the City since</p> <p>21 '97 thereabouts?</p> <p>22 A. '96-'97, within that range.</p> <p>23 Q. And Stephanie King, you've told me your</p>	<p>1 Q. And is he still a firefighter?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Still a student firefighter?</p> <p>4 A. Yes, sir. To my knowledge he is.</p> <p>5 Q. What, if anything, does he know about your case?</p> <p>6 A. I don't know if he knows anything, Mr. Morgan.</p> <p>7 Q. Has he received any favorable treatment in your</p> <p>8 opinion?</p> <p>9 A. I think he has.</p> <p>10 Q. What kind of favorable --</p> <p>11 A. Being that he was involved in the incident at</p> <p>12 work, which according to the rules and the</p> <p>13 personnel procedures of the City, what he did</p> <p>14 was considered a major offense and he should</p> <p>15 have been dismissed.</p> <p>16 Q. What was that major offense?</p> <p>17 A. He went in and changed documents, provided false</p> <p>18 documents in a calendar that belonged to me</p> <p>19 while I was on duty because he was running late</p> <p>20 and had been late for work several consecutive</p> <p>21 times and knew he was in trouble. And he knew</p> <p>22 what was going to happen to you if it continued</p> <p>23 because I made sure I let him know each time</p>

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1 that it occurred what was going to happen.  
 2 Q. And did you report that, that he changed  
 3 documents?  
 4 A. I documented and reported to my immediate  
 5 supervisor, and it did go up the chain.  
 6 Q. What happened to him?  
 7 A. If I'm thinking correctly, he received a  
 8 suspension for, I think it was, four shifts but  
 9 was allowed to return back to work, and he still  
 10 works there.  
 11 Q. Has he applied for any promotions?  
 12 A. I don't know if he applied for any promotions or  
 13 not, Mr. Morgan.  
 14 Q. Then you've got Casey McCloud -- McLeod?  
 15 A. McLeod.  
 16 Q. Who is that?  
 17 A. Casey McLeod also was a student firefighter, but  
 18 presently he is now a fire career firefighter.  
 19 Q. White male?  
 20 A. White male.  
 21 Q. And does he know anything about your case?  
 22 A. I don't know if he knows anything or not,  
 23 Mr. Morgan.

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1 Q. Have you discussed it with him?  
 2 A. No, sir, I have not.  
 3 Q. Did he apply for any promotions?  
 4 A. I don't know if he have or not, sir.  
 5 Q. Any problems that you're aware of with him?  
 6 A. Presently, no, sir.  
 7 Q. Well, in the past?  
 8 A. Well, there have been some incidents where he  
 9 also was late for work, an incident where he had  
 10 an unexcused absence that pretty much was said  
 11 or told to me through my immediate supervisor at  
 12 the time, which was Johnny Lawrence, that we're  
 13 not going to worry about this; it never happened  
 14 as far as I'm concerned.  
 15 Q. Did you complain to anybody about that above  
 16 your supervisor?  
 17 A. I complained to Chief Lawrence directly and told  
 18 him that I didn't think it was right.  
 19 Q. To Chief Lawrence?  
 20 A. Yes, sir. Johnny Lawrence. That was my  
 21 immediate supervisor at the time.  
 22 Q. Did you complain to anybody above your immediate  
 23 supervisor?

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1 A. Well, I talked to Mr. Langley about it, too.  
 2 Larry Langley.  
 3 Q. And what did he say?  
 4 A. I also talked to -- Well, let me back up.  
 5 Johnny Lawrence was filling in for my supervisor  
 6 at the time who was Danny Leverette. So I spoke  
 7 to Johnny Lawrence and I talked to Danny  
 8 Leverette and I also talked to Larry Langley.  
 9 Q. But you're not aware of anything he knows about  
 10 you not being promoted?  
 11 A. I don't know if he knows anything.  
 12 Q. How about Dean Garrett? Does he know anything  
 13 about you not being promoted?  
 14 A. I don't know if he knows anything or not, sir.  
 15 Q. Was he still with the City when you applied for  
 16 the battalion chief?  
 17 A. I think he had retired.  
 18 Q. Have you ever discussed with him any complaints  
 19 you have about racial discrimination?  
 20 A. No, sir.  
 21 Q. Amy Weaver, it says she's -- I don't know what  
 22 it says she is, but she takes care of the  
 23 Auburn-Opelika News. Have you ever talked to an

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1 Amy Weaver?  
 2 A. No, sir.  
 3 Q. Do you know who she is?  
 4 A. No, sir.  
 5 Q. Lindsey Field, do you know who that is?  
 6 A. No, sir.  
 7 Q. Clinton Hammond, do you know who he is?  
 8 A. Yes, sir.  
 9 Q. Does he know anything about your claims of  
 10 racial discrimination?  
 11 A. Mr. Hammond is deceased. I don't know what he  
 12 knew when he was living.  
 13 Q. Do you remember what year he died?  
 14 A. I don't remember the exact year, but -- Maybe  
 15 eight, nine years ago maybe.  
 16 Q. Jimmy Lee Brown, who is that?  
 17 A. He was the battalion chief of the Auburn Fire  
 18 Division, the one who had the health issues  
 19 that --  
 20 Q. Hammock?  
 21 A. No.  
 22 Q. Horace Clanton?  
 23 A. Horace Clanton, yes, sir, was assigned to fill

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<p>1 his position in his absence.</p> <p>2 Q. Was Mr. Brown still a battalion chief when you</p> <p>3 applied for the promotion to battalion chief?</p> <p>4 A. Was he? I don't recall if he was or not,</p> <p>5 Mr. Morgan. It was right during the time -- I</p> <p>6 think he was maybe on sick leave or something of</p> <p>7 that nature. Let me see. Yes, sir, he was</p> <p>8 still employed there.</p> <p>9 Q. Have you had any conversations with him about</p> <p>10 racial discrimination or your claims?</p> <p>11 A. No, sir.</p> <p>12 Q. Who is Wendall Willis?</p> <p>13 A. He was a guy that I used to work with years</p> <p>14 ago. He was a career firefighter. He doesn't</p> <p>15 work there anymore. It's been a long time since</p> <p>16 he worked there.</p> <p>17 Q. Do you know anything that he knows about your</p> <p>18 case?</p> <p>19 A. No, sir.</p> <p>20 Q. Have you talked to him about it?</p> <p>21 A. No, sir.</p> <p>22 Q. James Lyle?</p> <p>23 A. Yes, I know him.</p>	<p>1 A. Used to be a lieutenant in the fire division but</p> <p>2 was demoted to firefighter approximately a</p> <p>3 couple of months before he actually retired.</p> <p>4 Q. How long has he been retired?</p> <p>5 A. Over ten years.</p> <p>6 Q. White male?</p> <p>7 A. White male.</p> <p>8 Q. Do you know anything he knows about your case?</p> <p>9 A. No, sir.</p> <p>10 Q. Have you discussed your case with him?</p> <p>11 A. No, sir.</p> <p>12 Q. Ron Jones?</p> <p>13 A. Ronnie Jones?</p> <p>14 Q. Yeah.</p> <p>15 A. Ronald Jones? He is a retired shift commander,</p> <p>16 captain, at the time.</p> <p>17 Q. Was he still with the City when you applied for</p> <p>18 battalion chief?</p> <p>19 A. No, sir.</p> <p>20 Q. Do you know anything he knows about your case?</p> <p>21 A. I don't know if he knows anything, sir.</p> <p>22 Q. Have you discussed it with him?</p> <p>23 A. No, sir.</p>
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<p>1 Q. Who is he?</p> <p>2 A. Also a career firefighter years ago.</p> <p>3 Q. Has he been gone a long time?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Have you discussed your lawsuit with him?</p> <p>6 A. No, sir.</p> <p>7 Q. Have you talked to him about it or seen him</p> <p>8 recently?</p> <p>9 A. No, sir.</p> <p>10 Q. Tommy James?</p> <p>11 A. Yes, sir, I know him.</p> <p>12 Q. Who is Tommy James?</p> <p>13 A. Tommy James is a retired team leader from the</p> <p>14 Auburn Fire Division.</p> <p>15 Q. Was he retired when you applied for the</p> <p>16 battalion chief?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you know anything that he knows about your</p> <p>19 case?</p> <p>20 A. No, sir.</p> <p>21 Q. Have you discussed your case with him?</p> <p>22 A. No, sir.</p> <p>23 Q. Kenneth Lee Smith?</p>	<p>1 Q. Dexter Card. Do you know Dexter Card?</p> <p>2 A. Lieutenant Dexter Card, yes, sir.</p> <p>3 Q. Does he know anything about your case?</p> <p>4 A. I don't know what he knows, sir.</p> <p>5 Q. Have you discussed your lawsuit with him?</p> <p>6 A. No, sir.</p> <p>7 Q. And he wasn't there when you took the test?</p> <p>8 A. No, sir.</p> <p>9 Q. William Felton?</p> <p>10 A. Yes, sir. Retired lieutenant.</p> <p>11 Q. Has he been gone a long time?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Have you discussed your lawsuit with him?</p> <p>14 A. No, sir.</p> <p>15 Q. Thomas Scott?</p> <p>16 A. Yes, sir. Retired -- Well, actually, he was</p> <p>17 terminated. Terminated career firefighter.</p> <p>18 Q. What did he do?</p> <p>19 A. I have no idea. Happened years ago.</p> <p>20 Q. Have you discussed your case with him?</p> <p>21 A. I haven't seen him, no, sir.</p> <p>22 Q. Steve Heart, who is he? H-E-A-R-T, Steve</p> <p>23 Heart? Name doesn't sound familiar?</p>



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1 A. Don't ring a bell with me.  
 2 Q. Larry Stanley, does that name sound familiar?  
 3 A. Don't ring a bell with me, sir.  
 4 Q. Gary Jones?  
 5 A. Yes, sir, I know him.  
 6 Q. Who is that?  
 7 A. Gary Jones is actually the brother to Ronnie  
 8 Jones. Never had an opportunity to work with  
 9 him. Haven't seen him.  
 10 Q. Does he know anything about your case?  
 11 A. I don't know if he knows anything or not.  
 12 Q. Have you discussed it with him?  
 13 A. No, sir.  
 14 Q. Was he gone when you took the promotion?  
 15 A. Yes, sir.  
 16 Q. Jan Dempsey?  
 17 A. Former mayor of the City of Auburn.  
 18 Q. Have you discussed your complaints with her?  
 19 A. No, sir.  
 20 Q. Have you discussed this lawsuit with her?  
 21 A. No, sir.  
 22 Q. Ron Tahita, do you know who he is?  
 23 A. That names sound familiar, but I don't know who

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1 he is.  
 2 Q. Do you know who Ellis Mitchell is?  
 3 A. Yes, sir, I do.  
 4 Q. Had any conversation with Ellis Mitchell about  
 5 this lawsuit?  
 6 A. No, sir.  
 7 Q. There were a number of documents that were  
 8 disclosed, and I'm not going to go through all  
 9 of them, but let me ask this. Toward the end of  
 10 these documents are a lot of paperwork dealing  
 11 with various employees, it looks like, with the  
 12 fire department: Michael Thee, Harvard  
 13 Graham --  
 14 What does this paperwork have to do with  
 15 your lawsuit?  
 16 A. Basically those papers are progressive  
 17 disciplinary procedures that were implemented on  
 18 them for improperly doing something in reference  
 19 to the Auburn Fire Division. Could vary from  
 20 being late for work or doing something they  
 21 don't supposed to do.  
 22 Q. And Dave Bradley?  
 23 A. Yes, sir. I recall him being late for work one

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1 time.  
 2 Q. Walter Peacock?  
 3 A. Uh-huh (positive response).  
 4 Q. Katie Hartsill?  
 5 A. Hartsill.  
 6 Q. Casey McLeod.  
 7 Other than being paperwork on people that  
 8 looks like most of them were late, does it have  
 9 some significance to your not being promoted to  
 10 battalion chief?  
 11 A. No. Those are just documentation as an officer  
 12 that I must do when these people don't comply to  
 13 the rules of the division.  
 14 Q. Just documentation showing that you disciplined  
 15 people when you thought they needed to be  
 16 disciplined?  
 17 A. According to the personnel policies of the City  
 18 of Auburn, whenever they violate any of their  
 19 rules, it is my job to document and submit it to  
 20 the immediate supervisor for any other action to  
 21 be taken, if necessary. All I can do is make a  
 22 request in reference to what I think should  
 23 happen.

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1 Q. Scott Chinowith?  
 2 A. Yes, sir.  
 3 Q. Other than documenting that these people didn't  
 4 do something that you thought they should do --  
 5 Cusak, Dennis Ballard, Kanaxi Sufom (phonetic),  
 6 Austin Bales -- do they have any bearing on you  
 7 not being promoted?  
 8 A. No, sir. But when we talked about  
 9 Mr. Thompkins --  
 10 Q. About who?  
 11 A. William Thompkins. You remember you mentioned  
 12 that name to me at the beginning? What I think  
 13 should have happened to Thompkins is basically  
 14 what happened to all these other guys you just  
 15 looked through, if anything. I mean, he didn't  
 16 do anything directly or violated any rules or  
 17 regulations within the personnel policies. And  
 18 what happened to all those people you just saw  
 19 should have happened to him. I think he should  
 20 have never been terminated.  
 21 Q. Before I get to my main question, let me be  
 22 clear. Those documents don't have anything to  
 23 do with you not being promoted, though, true?

<p style="text-align: right;">Page 213</p> <p>1 A. No, sir.</p> <p>2 Q. No, sir meaning I'm correct?</p> <p>3 A. You're correct.</p> <p>4 Q. And whatever happened to Mr. Thompkins you don't</p> <p>5 know for an actual fact, do you?</p> <p>6 A. I didn't make that decision. I don't know.</p> <p>7 Q. But whatever happened to Mr. Thompkins, he</p> <p>8 didn't file a lawsuit, did he?</p> <p>9 A. Not that I'm aware. I don't know if he filed</p> <p>10 one or not, sir.</p> <p>11 Q. But you're not familiar or know what he actually</p> <p>12 did or didn't do, do you?</p> <p>13 A. I don't know what he did, sir.</p> <p>14 Q. Now, let me ask you about the folks I represent</p> <p>15 and what it is that you think these people have</p> <p>16 done to constitutes racial discrimination and</p> <p>17 why you have sued them.</p> <p>18 The first one is Larry Langley.</p> <p>19 MR. HORSLEY: I'm going to do a</p> <p>20 blanket objection to all these</p> <p>21 questions because I think they ask</p> <p>22 for legal conclusions. But go</p> <p>23 ahead and answer them.</p>	<p style="text-align: right;">Page 215</p> <p>1 A. Yes, sir.</p> <p>2 Q. What?</p> <p>3 A. Larry Langley sent me a memo -- I'm sorry. He</p> <p>4 didn't send me a memo. He responded to an</p> <p>5 e-mail I sent to him in reference to the posting</p> <p>6 of the training officer position that Lee Lamar</p> <p>7 filled. And in his memo, he stated that, if I</p> <p>8 can remember correctly, somehow or another he</p> <p>9 lost it in his computer and that it was posted</p> <p>10 and it was posted for some period of time and it</p> <p>11 was for team leaders only. And at the time I</p> <p>12 was a lieutenant.</p> <p>13 Q. And that was for training officer?</p> <p>14 A. That was for training officer.</p> <p>15 Q. Is there anything that Larry Langley did that</p> <p>16 you think prevented you from being promoted to</p> <p>17 battalion chief because of your race?</p> <p>18 A. I also recall an incident. If I'm thinking</p> <p>19 correctly, it was during the time I filed my</p> <p>20 grievance in 2005. Mr. Langley came to my house</p> <p>21 and delivered a letter from Mr. James, which I</p> <p>22 had addressed to him. And during that</p> <p>23 deliverance, we conversed, and he told me in a</p>
<p style="text-align: right;">Page 214</p> <p>1 A. Larry Langley -- Ask your question.</p> <p>2 Q. What is it that Larry Langley has done that you</p> <p>3 think is racially discriminatory or retaliation</p> <p>4 and caused you to sue him in this lawsuit?</p> <p>5 A. Mr. Langley have not allowed me to -- Let me</p> <p>6 back up.</p> <p>7 I feel like -- I think Mr. Langley has been</p> <p>8 unfair to me as a fire lieutenant and the</p> <p>9 responsibilities I have and the position I</p> <p>10 should fill as a fire lieutenant in the absence</p> <p>11 of or in reference to whatever the job may be.</p> <p>12 I don't think he's been honest with me about</p> <p>13 several things throughout my career. I think</p> <p>14 he's been misleading to a point where when</p> <p>15 things do occur, I'm not aware of it. I have to</p> <p>16 go through -- go through my immediate supervisor</p> <p>17 asking questions in reference to find out what's</p> <p>18 going on. Overall I just think he's been very</p> <p>19 unfair to me as specifications of my rank, which</p> <p>20 is fire lieutenant.</p> <p>21 Q. Is there anything that you claim that Larry</p> <p>22 Langley did that prevented you from being</p> <p>23 promoted to battalion chief?</p>	<p style="text-align: right;">Page 216</p> <p>1 nutshell that if I underwent or continued my</p> <p>2 grievance that a red flag would be up against my</p> <p>3 name and people of the City would think that I'm</p> <p>4 not willing to comply with what they are doing</p> <p>5 and that basically I would have a hard time, you</p> <p>6 know, progressing working there whatsoever.</p> <p>7 Q. Well, assume all that is true. Is there</p> <p>8 anything that you know of that he did that kept</p> <p>9 you from being promoted to battalion chief in</p> <p>10 February or March or April of '06?</p> <p>11 A. I think he had something to do with allowing</p> <p>12 non-probationary personnel to be eligible to</p> <p>13 apply for that position, therefore making it</p> <p>14 more challenging for me to possibly attempt to</p> <p>15 obtain that position.</p> <p>16 Q. Well, first of all, in terms of that test, it</p> <p>17 didn't matter how many people applied. I mean,</p> <p>18 you were graded on what you made, right?</p> <p>19 MR. HORSLEY: Object to the form.</p> <p>20 Q. True? It didn't matter if a thousand people</p> <p>21 applied. You had to make 70?</p> <p>22 A. That was the rule.</p> <p>23 Q. So it didn't matter how many folks were in that</p>

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1 room. You either were going to make 70 or not  
 2 make 70, right?  
 3 A. Right.  
 4 Q. And the best I can tell, the only person who  
 5 took that test that was a non-probationary  
 6 career officer was Chris Turner, another black  
 7 male. Are you complaining that Chris Turner  
 8 should not have been allowed to take that test?  
 9 A. I can't say -- I don't -- I'm not in a position  
 10 to say what he can or can't take. But Chris  
 11 Turner was allowed to take the test.  
 12 Q. And he didn't make it, did he?  
 13 A. No, sir, he did not.  
 14 Q. And that didn't influence your grade one bit,  
 15 did it?  
 16 A. Not that I'm aware of, it didn't.  
 17 Q. So can you agree with me that whether or not  
 18 Larry Langley did or didn't allow  
 19 non-probationary permanent employees to take the  
 20 test doesn't affect your score one bit?  
 21 A. I'm not aware if it did or not, sir.  
 22 Q. So you can't think of any reason or anything  
 23 that Larry Langley did to keep you from being

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1 promoted to battalion chief in April of '06, can  
 2 you?  
 3 A. I can't recall anything at this time, sir.  
 4 Q. And what is it that Mr. Langley said or did that  
 5 you think was not honest or misleading?  
 6 A. Basically when he said that the training officer  
 7 position was posted.  
 8 Q. And what is it that you think he did or didn't  
 9 do that was unfair to your position as a fire  
 10 lieutenant?  
 11 A. In the absence of a shift commander, captain, or  
 12 battalion chief, I wasn't given the opportunity  
 13 to fill those positions.  
 14 Q. Is that the Horace Clanton deal?  
 15 A. That's part of it, yes, sir.  
 16 Q. What else besides Horace Clanton?  
 17 A. There were several other times when things  
 18 got -- things came about whereas when I applied  
 19 for it, he wanted to -- he did whatever he  
 20 deemed necessary to -- that made me think he was  
 21 trying to prevent me from being a part of it.  
 22 Q. Did any of those incidences occur after you  
 23 complained about Horace Clanton?

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1 A. No, sir.  
 2 Q. And what about Lee Lamar? What is it that Lee  
 3 Lamar did in your opinion that kept you from  
 4 being promoted because of your race or in  
 5 retaliation?  
 6 A. I don't recall. I'm not aware of anything at  
 7 this time, sir.  
 8 Q. And Bill Ham, Jr., what is it that he did that  
 9 kept you from being promoted because of your  
 10 race or in retaliation?  
 11 A. I'm not aware of anything at this time, sir.  
 12 Q. Have you ever spoken to Bill Ham, Jr. about any  
 13 of this?  
 14 A. No, sir.  
 15 Q. And what is it that Steve Reeves did to keep you  
 16 from being promoted because of your race or in  
 17 retaliation?  
 18 A. I don't know what role he could have played in  
 19 any of this, but being he works in the human  
 20 resource department, he had to play some role in  
 21 it. He was present during all the orientation  
 22 and the testing procedures.  
 23 Q. Anything else other than the fact that he's in

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1 HR?  
 2 A. I'm not aware of anything, sir.  
 3 Q. And you're not aware of any specifics that he  
 4 did, are you?  
 5 A. No, sir.  
 6 Q. And then Bill James, what is it that you say  
 7 Bill James did to keep you from being promoted  
 8 because of your race or in retaliation?  
 9 A. Other than the point of me speaking with him  
 10 directly telling him there was a problem at the  
 11 Auburn Fire Division, I'm not aware of what he  
 12 knows or done or -- I don't know.  
 13 Q. And my understanding is that when you spoke with  
 14 him privately, you never said, hey, I'm being  
 15 discriminated against in promotions because of  
 16 my race, did you?  
 17 A. I don't recall making that statement, sir.  
 18 Q. And your conference with him was before you took  
 19 the battalion chief test, wasn't it?  
 20 A. Yes, sir. It was before they actually  
 21 implemented the title change or the promotion  
 22 for team leader to lieutenant.  
 23 Q. And Charles M. Duggan, the city manager, have

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<p>1 you ever spoken to the city manager about any</p> <p>2 complaints you have about race discrimination or</p> <p>3 retaliation?</p> <p>4 A. No, sir.</p> <p>5 Q. Do you know of anything that Charles M. Duggan</p> <p>6 did to keep you from being promoted because of</p> <p>7 your race or in retaliation?</p> <p>8 A. No, sir, I'm not aware of anything he knows.</p> <p>9 Q. And then you've sued the City of Auburn. What</p> <p>10 is it you say the City of Auburn did to keep you</p> <p>11 from being promoted because of your race or in</p> <p>12 retaliation?</p> <p>13 A. Being that the City of Auburn is responsible for</p> <p>14 everything that has taken place throughout the</p> <p>15 history of the department, why no blacks or</p> <p>16 African-Americans have been hired or promoted</p> <p>17 since me or since Mr. Ogletree, I don't</p> <p>18 understand that. I'm very concerned about</p> <p>19 that. What's the reason for it? I just don't</p> <p>20 understand it.</p> <p>21 Q. Which occurred first? Were you promoted to</p> <p>22 lieutenant before or after Mr. Ogletree became a</p> <p>23 team leader?</p>	<p>1 would have received as a battalion chief</p> <p>2 compared to what you're making now.</p> <p>3 A. Yes, sir.</p> <p>4 Q. I assume that --</p> <p>5 A. To the conclusion of my retirement, whenever I</p> <p>6 retire.</p> <p>7 Q. The difference in salary and ever how that</p> <p>8 impacts retirement benefits and whatever?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Then you've got a claim in here for emotional --</p> <p>11 I thought you did. I thought I had written in</p> <p>12 here emotional distress.</p> <p>13 (Brief off-the-record discussion.)</p> <p>14 Q. Are you claiming emotional distress or mental</p> <p>15 anguish?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Have you seen any professional mental health</p> <p>18 counselors, doctors, psychiatrists, or</p> <p>19 psychologists for any mental anguish or</p> <p>20 emotional distress which you claim as a result</p> <p>21 of not being promoted?</p> <p>22 A. No, sir.</p> <p>23 Q. Had you ever seen a mental health specialist --</p>
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<p>1 A. Approximately one month before he became a team</p> <p>2 leader.</p> <p>3 Q. You were promoted to lieutenant?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And he would have gone through the structured</p> <p>6 interview that you've talked about to become a</p> <p>7 team leader as far as you know?</p> <p>8 A. As far as I know, he went through a structured</p> <p>9 interview. How was it? Was it identical to</p> <p>10 previous times? I don't know.</p> <p>11 Q. Any other reason that you've sued the City of</p> <p>12 Auburn other than you just don't understand</p> <p>13 about the hiring and the promotion?</p> <p>14 MR. HORSLEY: Object to the form. You</p> <p>15 can answer.</p> <p>16 A. I'm not aware of anything at this time.</p> <p>17 Q. Let me ask you about your damages, how you claim</p> <p>18 you've been damaged. Do you know what I'm</p> <p>19 talking about?</p> <p>20 A. Yes, sir.</p> <p>21 Q. I assume we can just get through this quick. I</p> <p>22 assume that one way you claim you've been</p> <p>23 damaged is the difference in salary that you</p>	<p>1 A. No, sir.</p> <p>2 Q. -- before this or a psychiatrist or a</p> <p>3 psychologist?</p> <p>4 A. No, sir.</p> <p>5 Q. What is your claim for mental anguish and</p> <p>6 emotional distress? What is it that you claim?</p> <p>7 A. I've been -- For years, Mr. Morgan, I've been</p> <p>8 labeled as a problem by my immediate</p> <p>9 supervisors, and basically it has traveled from</p> <p>10 one shift to another to one shift commander to</p> <p>11 another to eventually up the chain to the point</p> <p>12 where when it actually got to the point of a</p> <p>13 hearing, it was pretty much all over the</p> <p>14 division, which, you know, challenged my skill</p> <p>15 as a leader amongst my men, just my overall</p> <p>16 character as a firefighter, officer, an</p> <p>17 employee, the whole nine, and being that it has</p> <p>18 been challenging at times for me to successfully</p> <p>19 and progressively manage my people and to</p> <p>20 conduct myself safely and to do my job in a</p> <p>21 manner in which I'm supposed to do it. I always</p> <p>22 felt like I was being watched. Any mistakes I</p> <p>23 make or anything that may happen that falls</p>

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1 under my responsibility, you know, I actually  
 2 think if it happens that it will be held against  
 3 me severely.  
 4 Q. And how long have you had those feelings?  
 5 A. Ever since I was promoted to lieutenant in  
 6 1996. Back then a lot of people didn't think I  
 7 deserved it. They thought I was promoted  
 8 because I was black. They thought things that I  
 9 never thought people that I trust and work with  
 10 in the profession that I do would actually  
 11 think. I applied for the position, I was  
 12 eligible for the position, and I got the  
 13 position, not because of my skin color but  
 14 because I thought I was the best person for the  
 15 job.  
 16 Q. Well, do you claim you suffered any additional  
 17 mental anguish or emotional distress as a result  
 18 of not being promoted to the battalion chief or  
 19 is it just something that's been going on since  
 20 '96?  
 21 A. That's adding to the problem overall. I mean,  
 22 here I am the only lieutenant in the fire  
 23 division, and then here comes title changes

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1 which pretty much put people on the level that  
 2 I'm on. Now I've got to -- Where I had no one  
 3 to compete with, now I've got to compete with  
 4 thirteen other people for a position that I  
 5 didn't even have to compete with anyone with.  
 6 Why couldn't I have been appointed like some of  
 7 these other people that have been appointed  
 8 through the years? Why couldn't I have  
 9 undergone a structured interview? Why I got to  
 10 go take a test and make a cutoff score to be  
 11 eligible for a position when at that particular  
 12 time or at a particular time, I was the only  
 13 fire lieutenant in the whole fire division? So  
 14 that concerns me severely.  
 15 Q. Well, how does this mental anguish or emotional  
 16 distress manifest itself? How does it affect  
 17 you? Are you not able to do your job?  
 18 A. Doing my job is very challenging. Rarely do I  
 19 sleep at night when I'm on shift because I don't  
 20 know what could happen. I've got people that  
 21 live in the stations. I've got people that have  
 22 access to the stations. I'm just at a point now  
 23 where there's not too many people I trust at the

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1 Auburn Fire Division.  
 2 Q. And is that because of this battalion chief  
 3 promotion?  
 4 A. Because of everything that I've dealt with,  
 5 Mr. Morgan, to include the battalion chief  
 6 promotion.  
 7 Q. But you haven't seen any professionals?  
 8 A. No, sir, I have not seen any professionals.  
 9 Q. Do they have some counseling program that's  
 10 available to the employees of the City of  
 11 Auburn?  
 12 A. I'm quite sure they have some type of program,  
 13 yes.  
 14 Q. Have you done anything in that regard?  
 15 A. No, sir, I have not done anything yet.  
 16 Q. And I know you've told me this, and I  
 17 apologize. I'm really not trying to belabor  
 18 this. Who is it that you say was appointed, Lee  
 19 Lamar? Who was appointed to a position?  
 20 A. Apparently Lee Lamar was because I don't recall  
 21 him going through an interview. I don't recall  
 22 the position being posted. The deputy chief  
 23 position, which he got, it was a structured

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1 interview. But according to the paperwork or  
 2 the information that was forwarded to me, he was  
 3 appointed as deputy chief.  
 4 Q. Well, did he have a structured interview as  
 5 part of -- to be deputy chief?  
 6 A. Yes, sir. There was a structured interview that  
 7 I also attended.  
 8 Q. And you applied for that position?  
 9 A. Yes, sir.  
 10 Q. So you know there was some process by which he  
 11 was selected?  
 12 A. For the deputy chief, it was.  
 13 Q. But you're saying for training officer?  
 14 A. Training officer ...  
 15 Q. And how long ago was that?  
 16 A. I don't remember the date. 2003 or 2004, one of  
 17 those.  
 18 Q. Anybody else that you claim was appointed other  
 19 than Lee Lamar, training officer?  
 20 A. Terry Walker, he was appointed.  
 21 Q. And what was he appointed to?  
 22 A. Training chief. Training officer.  
 23 Q. Do you want to be training officer? Would you



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<p>1 have given up your position as lieutenant to</p> <p>2 be --</p> <p>3 A. I applied for the position, but today I can't --</p> <p>4 I can't say what I would do without talking with</p> <p>5 my attorney and discussing it further.</p> <p>6 Q. When did you apply for the position of training</p> <p>7 officer?</p> <p>8 A. I don't remember the date, Mr. Morgan.</p> <p>9 Q. Who got it?</p> <p>10 A. Terry Walker got it.</p> <p>11 Q. So when Terry Walker was appointed, there was a</p> <p>12 process in which you participated?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And he was selected?</p> <p>15 A. And understand, Mr. Morgan, there was no test.</p> <p>16 There was no written test. When John Lankford</p> <p>17 got the training officer position, there was no</p> <p>18 test.</p> <p>19 Q. Are you complaining there should have been a</p> <p>20 test or shouldn't have been a test?</p> <p>21 A. I was made to take a test for battalion chief.</p> <p>22 Q. Well, so was everybody else that was promoted in</p> <p>23 April of '06, weren't they?</p>	<p>1 promotion.</p> <p>2 Q. You think that's a promotion?</p> <p>3 A. Yes, sir.</p> <p>4 Q. But you know that's not true?</p> <p>5 MR. HORSLEY: Object to the form.</p> <p>6 A. Well, the thing is is that when -- captains,</p> <p>7 prior to them going to battalion chief, they</p> <p>8 had, I think it was, two bugles as far as their</p> <p>9 brass. They went to three. Team leaders had</p> <p>10 collar insignia, and they went to bugles. I</p> <p>11 wear bugles, and I know what I had to do to get</p> <p>12 my bugles.</p> <p>13 Q. So you're saying Eddie Ogletree should not be a</p> <p>14 lieutenant?</p> <p>15 MR. HORSLEY: Object to the form.</p> <p>16 A. I'm not saying --</p> <p>17 Q. I'm asking you. Are you saying Eddie Ogletree</p> <p>18 should not be a lieutenant?</p> <p>19 MR. HORSLEY: Object to the form.</p> <p>20 Q. It's a simple question.</p> <p>21 MR. HORSLEY: You can answer.</p> <p>22 A. As far as I'm concerned, Eddie Ogletree and all</p> <p>23 other thirteen people who signed that paper</p>
Page 230	Page 232
<p>1 A. But nobody between --</p> <p>2 Q. Didn't everybody that applied for battalion</p> <p>3 chief in February and March of '06 have to take</p> <p>4 a written test?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So Terry Walker and Lee Lamar. Anybody else you</p> <p>7 claim was appointed?</p> <p>8 A. John Lankford.</p> <p>9 Q. And what was he appointed to?</p> <p>10 A. Training officer.</p> <p>11 Q. Was that before or after Lee Lamar?</p> <p>12 A. That was after Lee Lamar.</p> <p>13 Q. Did you apply before then?</p> <p>14 A. No, sir.</p> <p>15 Q. Did anybody apply for it then?</p> <p>16 A. I'm not aware of who applied for it.</p> <p>17 Q. Lee Lamar, John Lankford, and Terry Walker.</p> <p>18 Anyone else that was appointed?</p> <p>19 A. I look -- Overall I look at the title changes as</p> <p>20 a promotion.</p> <p>21 Q. The title changes?</p> <p>22 A. Yes, sir. From captain to battalion chief, from</p> <p>23 team leader to lieutenants, I look at that as a</p>	<p>1 should be team leaders.</p> <p>2 Q. Should not be a lieutenant?</p> <p>3 A. No, sir.</p> <p>4 Q. And should not have been eligible to apply for</p> <p>5 battalion chief?</p> <p>6 MR. HORSLEY: Object to the form.</p> <p>7 A. No, sir.</p> <p>8 Q. I mean, that's your position? They should not</p> <p>9 have been eligible to apply for battalion chief;</p> <p>10 is that true?</p> <p>11 MR. HORSLEY: Object to the form. You</p> <p>12 can answer.</p> <p>13 A. Yes, that's true.</p> <p>14 Q. I want to try to get a grasp on this mental</p> <p>15 anguish, emotional distress. I know you haven't</p> <p>16 seen any professionals. Specifically as to not</p> <p>17 being promoted to battalion chief, how has that</p> <p>18 affected you?</p> <p>19 A. Can you be more specific on that question,</p> <p>20 please, sir?</p> <p>21 Q. I wish I could. I mean, do you not want to go</p> <p>22 to work? You can't sleep? What is it?</p> <p>23 A. I'm very displeased at work, very.</p>

<p style="text-align: right;">Page 233</p> <p>1 Q. But you've not discussed -- How about your 2 family doctor? Did you discuss it with your 3 family doctor? 4 A. No, sir. 5 Q. Who is your family doctor? 6 A. Dr. Kevin L. Jackson. That's my medical doctor. 7 Q. And where is he located? 8 A. Auburn, Alabama. 9 Q. You've got a loss wage claim based on the 10 difference in the positions. You have a claim 11 for mental anguish and emotional distress. Any 12 other way you claim you've been damaged by not 13 being promoted to battalion chief because of 14 your race or in retaliation? 15 A. Directly speaking, the opportunity to advance. 16 I've always had a goal to be somewhere within 17 the Auburn -- 18 MR. HORSLEY: He's just asking you if 19 there's any other category of 20 damages that you're claiming other 21 than wages and mental anguish and 22 emotional distress. That's what 23 he's asking.</p>	<p style="text-align: right;">Page 235</p> <p>1 Duggan -- do you think they deliberately and 2 intentionally kept you from being promoted? 3 MR. HORSLEY: Object to the form. 4 A. I don't have any comment about that right this 5 time, Mr. Morgan. 6 MR. MORGAN: Give me two minutes, and 7 I may be through. 8 (Brief recess was taken.) 9 Q. (Continuing by Mr. Morgan) Mr. Stephens, are 10 you familiar with the City's educational 11 assistance plan -- do you know what that is -- 12 or program? 13 A. I'm somewhat familiar with it. It's been a long 14 time since I seen that, sir. 15 Q. Have you taken advantage of that opportunity to 16 complete your college education or school? 17 A. I have. In my career I have taken advantage of 18 it. 19 Q. Tell me what you've done in terms of educational 20 assistance. 21 A. I have taken classes -- Everything pretty much 22 in my latter years I took was in reference to my 23 career with the Auburn Fire Division. And I</p>
<p style="text-align: right;">Page 234</p> <p>1 A. I can't think of nothing else at this time, sir. 2 Q. Loss wages and emotional distress. 3 And then this opportunity to advance, what 4 do you mean by that? 5 A. Career advancement, move up, be promoted. 6 Q. Can't move up because you didn't get that 7 promotion. Okay. 8 Any other damages you claim? I want -- I'm 9 not -- I want to know anything that you claim as 10 a damage. I've got your wages, I've got your 11 emotional distress, and I've got your 12 opportunity to advance. Are there any other 13 damages that you claim in this lawsuit? 14 MR. HORSLEY: You're not asking 15 punitives obviously? 16 MR. MORGAN: I'm not talking about 17 punitives. 18 A. I think that pretty much touches bases. 19 Q. I am going to ask you this one question about 20 punitives. 21 Do you claim that any of these people that 22 you've sued -- Larry Langley, Lee Lamar, Bill 23 Ham, Steven Reeves, Bill James, Charles</p>	<p style="text-align: right;">Page 236</p> <p>1 took an EMT course. I can't remember when it 2 was, but it was right during the time when the 3 local colleges and junior colleges were 4 implementing the change from quarterly to 5 semesters. Took the EMT course. Made the 6 grade. Submitted all the paperwork. Told my 7 immediate supervisors in reference to tuition 8 reimbursement and all that. Met all 9 requirements but never was reimbursed. 10 During those times when I took those -- that 11 course -- it was approximately nine weeks or a 12 quarter long -- I had to get people to work for 13 me. I think somewhere in the education program 14 of the City, it states they allow you to take 15 time off to take these courses as long as you 16 make them up. I work a 24-hour shift. I work a 17 little bit different than other people in the 18 City; therefore, I couldn't necessarily do 19 that. But I was allowed to swap or get people 20 to cover for me so I could attend these courses 21 or whatever courses that I decided to take. 22 MR. MORGAN: That's all I've got, 23 Richard.</p>

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<p>1 MR. HORSLEY: I've got a few.</p> <p>2 EXAMINATION</p> <p>3 BY MR. HORSLEY:</p> <p>4 Q. Gerald, either in layman's terms or in legal</p> <p>5 terms, do you truly understand the meaning of</p> <p>6 the term "disparate impact"?</p> <p>7 A. No, sir.</p> <p>8 Q. You got a lot of questions about disparate</p> <p>9 impact and what you're claiming in the lawsuit</p> <p>10 as it relates to disparate impact. My question</p> <p>11 is: Do you have an understanding as to what you</p> <p>12 are ultimately claiming in this lawsuit,</p> <p>13 claiming happened to you?</p> <p>14 A. Yes, sir, I kind of understand.</p> <p>15 Q. What are you claiming happened to you in this</p> <p>16 lawsuit?</p> <p>17 A. I'm claiming that basically because I'm a black</p> <p>18 man employed with the City, I was discriminated</p> <p>19 against.</p> <p>20 Q. Are you claiming that with regard to the 2006</p> <p>21 battalion chief promotion?</p> <p>22 A. Yes, sir. That's a part of it.</p> <p>23 Q. You were also asked a lot of questions about</p>	<p>1 promoted in front of you as it relates to racial</p> <p>2 discrimination?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 Q. Go ahead.</p> <p>5 A. I think I was more qualified than these guys</p> <p>6 were. I had more seniority. I was more</p> <p>7 experienced. I just directly speaking think I</p> <p>8 was more qualified.</p> <p>9 Q. Why do you think -- Again, from a layman's</p> <p>10 standpoint, why do you believe the City</p> <p>11 implemented the test for this promotion?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 Q. You can answer.</p> <p>14 A. Basically because I'm black and I was applying</p> <p>15 for the position.</p> <p>16 Q. Were other blacks applying for the position</p> <p>17 also?</p> <p>18 A. Other blacks were applying for the position as</p> <p>19 well.</p> <p>20 Q. Y'all spoke some about damages, and Randall</p> <p>21 asked you questions about mental anguish and</p> <p>22 emotional distress related to the denial of the</p> <p>23 promotion. Again, what is the reason you are</p>
Page 238	Page 240
<p>1 evidence, and I think evidence is probably a</p> <p>2 legal term also. Can you give us examples of</p> <p>3 how you were denied that promotion or</p> <p>4 discriminated against because of your race by</p> <p>5 the City of Auburn?</p> <p>6 MR. MORGAN: Object to the form.</p> <p>7 Q. You can answer.</p> <p>8 A. There was a lot of implementations that took</p> <p>9 place during the time when I was eligible for</p> <p>10 several positions, and it was something that was</p> <p>11 not practiced through those years. They gave a</p> <p>12 test, which, you know, for whatever reason they</p> <p>13 he gave it, they did it.</p> <p>14 Q. The test we've talked about for the battalion</p> <p>15 chief promotion?</p> <p>16 A. Yes.</p> <p>17 Q. What else?</p> <p>18 A. They made temporary assignments, and I think</p> <p>19 they never considered me for those assignments.</p> <p>20 They haven't promoted any blacks of the ones</p> <p>21 that was available that works there.</p> <p>22 Q. What are your thoughts about the seniority and</p> <p>23 experience level of the people that were</p>	<p>1 ultimately claiming you were denied that</p> <p>2 promotion?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. Basically because I'm black.</p> <p>5 Q. How does that affect you from an emotional</p> <p>6 standpoint?</p> <p>7 MR. MORGAN: Object to the form.</p> <p>8 A. Can I answer?</p> <p>9 Q. Yes, you can answer.</p> <p>10 A. Being judged because I'm a black man, that</p> <p>11 really bothers me a whole lot because I have</p> <p>12 applied myself. I've done everything that I can</p> <p>13 possibly do or everything they've asked me to do</p> <p>14 to obtain this position and have held it -- any</p> <p>15 position that I've applied and received and held</p> <p>16 it as long as of today. There are just things</p> <p>17 that happened to me that I think didn't happen</p> <p>18 to other people; therefore, it leads me to think</p> <p>19 that, along with other things that take place.</p> <p>20 Q. How does that make you feel?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. It basically just makes me feel like, you know,</p> <p>23 people don't trust me or whatever the case may</p>



<p style="text-align: right;">Page 241</p> <p>1 be and that they are going to give me a hard</p> <p>2 time at work and just make it very challenging</p> <p>3 for me when I'm working there.</p> <p>4 Q. He asked you about the individual defendants and</p> <p>5 what evidence you have that they had acted</p> <p>6 deliberately and intentionally. Who do you</p> <p>7 understand made the decisions to implement a</p> <p>8 test for the battalion chief promotion?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 Q. Go ahead.</p> <p>11 A. All the persons that are named on the</p> <p>12 paperwork. Now, I think they played a major</p> <p>13 role of some part or another in reference to</p> <p>14 what took place.</p> <p>15 Q. Who made the decisions to make the title changes</p> <p>16 from team leader to lieutenant?</p> <p>17 A. As far as I'm concerned, those names that was</p> <p>18 mentioned on the paperwork.</p> <p>19 Q. As far as you know, who made the decision to</p> <p>20 make the title change from captain to battalion</p> <p>21 chief?</p> <p>22 A. As far as I'm concerned, those people again</p> <p>23 whose name is on the paperwork.</p>	<p style="text-align: right;">Page 243</p> <p>1 Q. This temporary assignment, I want to be clear</p> <p>2 because I thought we had been through all this.</p> <p>3 The last temporary assignment about which you</p> <p>4 complained you didn't get was the one involving</p> <p>5 Horace Clanton that you filed an EEOC charge</p> <p>6 about, wasn't it?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And your thoughts on seniority and experience,</p> <p>9 that's why you think you're more qualified than</p> <p>10 the people who became battalion chiefs, true?</p> <p>11 A. Yes, sir. To include time on the job, time in</p> <p>12 grade, all that.</p> <p>13 Q. Seniority.</p> <p>14 A. Yes, sir.</p> <p>15 Q. So you think promotions should be based on</p> <p>16 seniority?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Not qualifications, not who can do the best job,</p> <p>19 simply I've been sitting in this job for the</p> <p>20 longest of anybody else; therefore, I need to be</p> <p>21 promoted?</p> <p>22 MR. HORSLEY: Object to the form.</p> <p>23 That's not --</p>
<p style="text-align: right;">Page 242</p> <p>1 MR. HORSLEY: That's all I have.</p> <p>2 EXAMINATION</p> <p>3 BY MR. MORGAN:</p> <p>4 Q. Mr. Stephens, was there anything on the test you</p> <p>5 took, the booklet, that you turned in to be</p> <p>6 graded that identified you as a black male?</p> <p>7 A. Identified me as a black male?</p> <p>8 Q. Anything that would tell the person that was</p> <p>9 grading that paper, hey, this is a black male.</p> <p>10 A. I'm not aware if anything was.</p> <p>11 Q. You didn't put Gerald Stephens, black male, did</p> <p>12 you?</p> <p>13 A. No, sir.</p> <p>14 Q. You didn't put Gerald Stephens,</p> <p>15 African-American, did you?</p> <p>16 A. No, sir.</p> <p>17 Q. You just put your name or your -- ever what that</p> <p>18 identification --</p> <p>19 A. Yes, sir.</p> <p>20 Q. So whoever graded your paper didn't know what</p> <p>21 your race was, did they?</p> <p>22 A. I'm not aware if they knew anything or not,</p> <p>23 Mr. Morgan.</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. Is that your position?</p> <p>2 MR. HORSLEY: Mischaracterization of</p> <p>3 testimony.</p> <p>4 A. I think seniority is a main part in the job I do</p> <p>5 and the job that the other firefighters do,</p> <p>6 which leads to the length of time on the job,</p> <p>7 knowing the job, being experienced doing the</p> <p>8 job. I don't think it should be based upon</p> <p>9 whether you pass or fail a test.</p> <p>10 Q. You don't? You don't think --</p> <p>11 A. A written test. No, sir, I don't.</p> <p>12 Q. You don't think a test that's designed to test</p> <p>13 your qualifications, your skill, knowledge of</p> <p>14 the job is more important than just having been</p> <p>15 on the payroll longer than somebody else?</p> <p>16 MR. HORSLEY: Object to the form.</p> <p>17 Q. That's your testimony?</p> <p>18 MR. HORSLEY: Object to the form.</p> <p>19 That's not his testimony.</p> <p>20 A. I don't necessarily look at it as being on the</p> <p>21 payroll, Mr. Morgan. I look at it as basically</p> <p>22 being on the job, learning the job, doing the</p> <p>23 job, training those who, you know, just may turn</p>

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<p>1 around and be your supervisors one day, you</p> <p>2 know. It takes time to be in that position</p> <p>3 that -- you know, what was being tested for, and</p> <p>4 I don't think a cutoff score of no nature should</p> <p>5 be involved. That's just what I think.</p> <p>6 Q. So you think that it's just strictly seniority</p> <p>7 is all that --</p> <p>8 MR. HORSLEY: Object to the form.</p> <p>9 That's not what he said.</p> <p>10 MR. MORGAN: That's exactly what he's</p> <p>11 saying.</p> <p>12 MR. HORSLEY: That's exactly not what</p> <p>13 he's saying. He just said --</p> <p>14 MR. MORGAN: Well, I'm going to ask</p> <p>15 him this.</p> <p>16 Q. Do you think strictly seniority is what you</p> <p>17 should go by?</p> <p>18 A. No, sir.</p> <p>19 Q. Then what other qualifications are there?</p> <p>20 A. Seniority, experience, time on the job.</p> <p>21 Q. Experience. How do you define experience?</p> <p>22 A. How long you've been working there.</p> <p>23 Q. Seniority?</p>	<p>1 A. I don't have any comments at this time.</p> <p>2 Q. You don't have a comment on whether or not you</p> <p>3 ought to test somebody's knowledge of the job?</p> <p>4 A. Well, you know, apparently not.</p> <p>5 Q. But you do have a comment that based on</p> <p>6 seniority you ought to be promoted?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Would you have been promoted to lieutenant if</p> <p>9 the City had used seniority as the guide stick</p> <p>10 back in 1996? Did you have the most seniority</p> <p>11 of anybody that applied to be a lieutenant or</p> <p>12 was eligible to be a lieutenant in 1996?</p> <p>13 A. Not in 1996.</p> <p>14 Q. You wouldn't have been promoted.</p> <p>15 A. Not in 1996.</p> <p>16 Q. And do you have -- I don't care if you want to</p> <p>17 call it, evidence, hearsay, knowledge --</p> <p>18 anything that you say that supports your</p> <p>19 contention that the City implemented a written</p> <p>20 test to discriminate against black applicants on</p> <p>21 the basis of their race? Anything? Anybody</p> <p>22 ever said anything, any hearsay, anything you've</p> <p>23 seen, any documents, anything that would support</p>
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<p>1 A. Yes. It falls under that category, yes, sir.</p> <p>2 Q. Time in the grade. Time on the job. That's</p> <p>3 seniority?</p> <p>4 A. Knowledge of the job, yes, sir. Training.</p> <p>5 Q. Back up.</p> <p>6 Knowledge of the job?</p> <p>7 A. Yes, sir.</p> <p>8 Q. How do you test knowledge of the job?</p> <p>9 A. I'm not in a position to justify how they go</p> <p>10 about testing that.</p> <p>11 Q. Do you agree that before someone should be</p> <p>12 promoted that you should test their knowledge of</p> <p>13 the job?</p> <p>14 MR. HORSLEY: Object to the form. Go</p> <p>15 ahead.</p> <p>16 Q. Shouldn't you test --</p> <p>17 A. I agree that testing procedures should be</p> <p>18 consistent whether a written test is involved or</p> <p>19 not.</p> <p>20 Q. That's not my question. My question is: Before</p> <p>21 a person is promoted, should knowledge of the</p> <p>22 job be tested?</p> <p>23 MR. HORSLEY: Object to the form.</p>	<p>1 that contention?</p> <p>2 MR. HORSLEY: Asked and answered, but</p> <p>3 go ahead and answer it again.</p> <p>4 A. Over a time span of ten years, I have not seen a</p> <p>5 black man or woman or African-American hired or</p> <p>6 promoted.</p> <p>7 Q. Under any procedure? Under any procedure? Is</p> <p>8 that your testimony?</p> <p>9 A. Under any procedure what?</p> <p>10 Q. Whether it was a written test or not written</p> <p>11 test?</p> <p>12 A. No, I haven't.</p> <p>13 Q. Well, then, what is there? What facts, what</p> <p>14 evidence, hearsay, anything, would make you say</p> <p>15 the City implemented a written test to</p> <p>16 discriminate against you on the basis of your</p> <p>17 race?</p> <p>18 MR. HORSLEY: Asked and answered. Go</p> <p>19 ahead.</p> <p>20 A. Basically nobody never been hired or promoted.</p> <p>21 That's it.</p> <p>22 Q. That's it?</p> <p>23 A. Yes, sir.</p>

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<p>1 MR. MORGAN: That's it. 2 (Deposition concluded at 3 approximately 4:00 p.m.) 4 ***** 5 FURTHER DEPONENT SAITH NOT 6 ***** 7 8 REPORTER'S CERTIFICATE 9 10 STATE OF ALABAMA: 11 12 MONTGOMERY COUNTY: 13 14 I, Pamela A. Wilbanks, CCR, Registered 15 Professional Reporter, and Commissioner for the State 16 of Alabama at Large, do hereby certify that I reported 17 the deposition of: 18 19 GERALD STEPHENS 20 21 who was first duly sworn by me to speak the truth, the 22 whole truth and nothing but the truth, in the matter 23 of: 24 25 EDDIE OGLETREE, an individual, 26 27 GERALD STEPHENS, an 28 individual, 29 30 Plaintiffs, 31 32 Vs. 33</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p> <p>Pamela A. Wilbanks, ACCR #334 Expiration Date: 9-30-2008 Registered Professional Reporter and Commissioner for the State of Alabama at Large</p>
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<p>1 In The State of Alabama, LARRY 2 LANGLEY, and individual, LEE LAMAR, 3 an individual, BILL HAM, JR., an 4 individual, STEVEN A. REEVES, an 5 individual, BILL JAMES, an 6 individual, CHARLES M. DUGGAN, an 7 individual, and CORTEZ LAWRENCE, 8 an individual, 9 Defendants. 10 In The U.S. District Court 11 For the Middle District of Alabama 12 Eastern Division 13 3:07-CV-867-WKW 14 on Friday, May 30, 2008. 15 The foregoing 249 computer printed pages 16 contain a true and correct transcript of the 17 examination of said witness by counsel for the parties 18 set out herein. The reading and signing of same is 19 hereby waived. 20 I further certify that I am neither of kin nor 21 of counsel to the parties to said cause nor in any 22 manner interested in the results thereof. 23 This 13th day of June 2008.</p>	



**DEPOSITION TESTIMONY OF  
STEPHEN REEVES**

ORIGINAL

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in the State of Alabama, LARRY  
LANGLEY, an individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants

\* \* \* \* \*

**DEPOSITION OF STEVEN A. REEVES**, taken pursuant  
to stipulation and agreement before Pamela A. Wilbanks,  
Certified Court Reporter, ACCR# 391, Registered  
Professional Reporter and Commissioner for the State of  
Alabama at Large, in the Conference Room of Auburn City  
Hall, 144 Tichenor, Auburn, Alabama, on Wednesday, July  
30, 2008, commencing at approximately 9:15 a.m.

**APPEARANCES**

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**ALSO PRESENT:**

Mr. D'Arcy Wernette  
Mr. Bill James  
Mr. Larry Langley  
Mr. Lee Lamar  
Mr. Eddie Ogletree  
Mr. Gerald Stephens

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\* \* \* \* \*

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1

**STIPULATION**

2

3 It is hereby stipulated and agreed by and  
4 between counsel representing the parties that the  
5 deposition of **STEVEN A. REEVES** is taken pursuant to the  
6 Alabama Rules of Civil Procedure and that said  
7 deposition may be taken before Pamela A. Wilbanks,  
8 Registered Professional Reporter and Commissioner for  
9 the State of Alabama at Large, without the formality of  
10 a commission, that objections to questions other than  
11 objections as to the form of the question need not be  
12 made at this time but may be reserved for a ruling at  
13 such time as the said deposition may be offered in  
14 evidence or used for any other purpose by either party  
15 provided for by the Statute.

16

17 It is further stipulated and agreed by and  
18 between counsel representing the parties in this case  
19 that the filing of said deposition is hereby waived and  
20 may be introduced at the trial of this case or used in  
21 any other manner by either party hereto provided for by  
22 the Statute regardless of the waiving of the filing of  
23 the same.

24

25 It is further stipulated and agreed by and  
26 between the parties hereto and the witness that the

1 signature of the witness to this deposition is hereby  
2 not waived.

3 \* \* \* \* \*

4 **STEVEN A. REEVES**

5 The witness, after having first been duly sworn  
6 to speak the truth, the whole truth and nothing but the  
7 truth testified as follows:

8 **EXAMINATION**

9 **BY MR. HORSLEY:**

10 Q. Please tell us your full name.

11 A. Steven Anderson Reeves.

12 Q. Mr. Reeves, my name is Richard Horsley. We've  
13 met a couple of times before. I'm going to ask  
14 you some questions today related to the lawsuit  
15 that's been filed by Mr. Ogletree and  
16 Mr. Stephens.

17 If you don't understand what I'm asking you,  
18 please ask me to repeat the question or rephrase  
19 it so that you understand it. Once you answer a  
20 question, I'm going to assume that you  
21 understood it and that you're giving the answer  
22 you intended to give. Okay?

23 A. Okay.

1 Q. Where do you currently reside?

2 A. 1071 Terrace Acres Drive, Auburn.

3 Q. And where are you currently employed?

4 A. City of Auburn.

5 Q. In what capacity?

6 A. I'm the human resources director.

7 Q. And how long have you been the human resources  
8 director with the City of Auburn?

9 A. Since 1994 -- 1993.

10 Q. 1993?

11 A. Yes, sir.

12 Q. Before '93 where were you employed?

13 A. City of Auburn.

14 Q. In what capacity?

15 A. Risk manager.

16 Q. Risk manager?

17 How long did you hold that job?

18 A. Six years.

19 Q. And before that where were you employed?

20 A. Auburn University.

21 Q. And in what capacity?

22 A. Faculty member.

23 Q. What type of faculty member?

1 A. I was a research associate.

2 Q. How long did you hold that job?

3 A. About nine months.

4 Q. Before that where were you employed?

5 A. Auburn University.

6 Q. In what capacity?

7 A. Graduate student.

8 Q. Before that you were a student --

9 A. Yes.

10 Q. -- at Auburn?

11 So the jobs you have held since you  
12 graduated from Auburn University would be with  
13 Auburn University and with the City of Auburn  
14 and that's it, correct?

15 A. Correct.

16 Q. Do you have relatives -- I'm assuming you do  
17 have relatives that live in Lee County.

18 A. I do.

19 Q. Is it a lot or is it just a few?

20 A. A few.

21 Q. Can you tell me who they are?

22 A. Starting with immediate family, my wife Jane,  
23 two children.

1 Q. They are not over 18 years of age, are they?

2 A. One is 18.

3 Q. What is his or her name?

4 A. Danielle.

5 Q. Who else?

6 A. Sister-in-law, Susan McChesney. Sister-in-law,  
7 Ann May.

8 Q. What are their husbands' names?

9 A. Susan is not married and Ann is widowed.

10 Q. Who else?

11 A. Do you want Ann's children?

12 Q. Not unless they are over 18.

13 A. Okay. Rem May. Remmington May.

14 Q. Is that it?

15 A. I think so.

16 Q. Do you have any relatives in Russell, Chambers,  
17 Montgomery, Lowndes, or Macon County?

18 A. No.

19 Q. Other than that I'm not going -- I'm going to  
20 try to get straight into the issues in this case  
21 because we don't have a lot of time. We're  
22 going to take four depositions today so I'm  
23 going to jump straight into the issues.

1           Tell me generally what your job duties are  
2           as the human resources director for the City of  
3           Auburn.

4       A.    Generally I coordinate compensation and  
5           benefits, employee relations, risk management  
6           and safety, employee training and development.

7       Q.    Do you participate in any way in the promotion  
8           practices of the City of Auburn?

9       A.    Yes.

10      Q.    In what capacity?

11      A.    I serve as a resource. I will do research as  
12           necessary.

13      Q.    Do you actually participate in decision-making  
14           with regard to promotions with City of Auburn  
15           employees?

16      A.    Only within my department.

17      Q.    You don't participate in the decisions to  
18           promote or not promote City of Auburn  
19           firefighters; is that correct?

20      A.    I have not.

21      Q.    You have not ever?

22      A.    I have not.

23      Q.    Are you in charge of implementing policies and

1 procedures with regard to the promotional  
2 practices of the City of Auburn?

3 A. Yes.

4 Q. Is anybody else in charge of that or is that  
5 your sole -- or are you the only person that is,  
6 in fact, in charge of that?

7 A. Each department head is charged with complying  
8 with the personnel policies as they pertain to  
9 promotions.

10 Q. But you as the human resources director are in  
11 charge of enforcing the promotional policies and  
12 procedures throughout the City of Auburn. Is  
13 that a fair statement?

14 MR. MORGAN: Object to the form.

15 A. No.

16 Q. So it's just within your department; is that  
17 correct?

18 A. I make recommendations regarding promotions  
19 within my department.

20 Q. Let's say from February until June of 2006, who  
21 would have been in charge of promotions at the  
22 City of Auburn Fire Division?

23 A. The city manager.

1 Q. And what was his name? What is his name?

2 A. Can you give me the dates again?

3 Q. Yeah. From February of '06 until June of '06.

4 A. Well, from February 10 or February 11, '06 -- I  
5 think I've got this date right. From February  
6 11, '06, it would have been the current city  
7 manager.

8 Q. Who is ...

9 A. Charles M. Duggan, Jr.

10 MR. HORSLEY: Off the record for a  
11 minute.

12 (Brief off-the-record discussion.)

13 Q. Charles Duggan was the city manager from  
14 February 11 of '06 until when?

15 A. He's currently the city manager.

16 Q. So he would have been the city manager in May of  
17 '06, correct?

18 A. Correct.

19 Q. And you just testified that he was -- he would  
20 have been the person in charge of promotions at  
21 the City of Auburn Fire Division; is that  
22 correct?

23 MR. MORGAN: Object to the form.



1 A. Ultimately, yes.

2 Q. When you say ultimately, I'm assuming that there  
3 are other individuals that would have also been  
4 involved in the promotion of firefighters within  
5 the City of Auburn Fire Division; is that  
6 correct?

7 A. Correct.

8 Q. And, again, concentrating on the time from  
9 February of '06 through June of '06, who at the  
10 City of Auburn Fire Division would have been in  
11 the decision-making process to promote  
12 firefighters?

13 A. Bill James.

14 Q. And he is the public safety director; is that  
15 correct?

16 A. That's correct.

17 Q. Still?

18 A. Still.

19 Q. Who else?

20 A. Lee Lamar.

21 Q. What's Mr. Lamar's position?

22 A. Currently he's the fire chief.

23 Q. In May of '06, what was his position with the

1 City of Auburn?

2 A. Deputy fire chief.

3 Q. Who was the fire chief at that time?

4 A. Larry Langley.

5 Q. Bill James, Lee Lamar. Who else would have been  
6 involved in the decision to promote firefighters  
7 at the City of Auburn?

8 A. I believe that's all.

9 Q. That's it?

10 And I may be wrong about this, but would  
11 Bill James and Larry Langley recommend  
12 firefighters for promotion and then Charles  
13 Duggan would have the ultimate say in whether or  
14 not those people were actually promoted?

15 A. Correct.

16 Q. Do you know back in May of 2006 whether or not  
17 Mr. Duggan had to approve every promotion or, if  
18 there was a dispute about a promotion, he would  
19 have the ultimate say?

20 A. He has to approve.

21 Q. He has to approve every promotion; is that  
22 correct?

23 A. Every promotion, yes.

1 Q. Tell me what, if any, participation you had in  
2 the battalion chief promotion that occurred in  
3 May of 2006.

4 A. I helped identify the firm that would guide us  
5 through that process. I helped put together a  
6 contract to employ that firm. I participated in  
7 the discussions about the process. I helped  
8 facilitate the interactions between the firm and  
9 the City.

10 (Plaintiff's Exhibit 1 marked for  
11 identification.)

12 Q. What I'm going to mark as Plaintiff's Exhibit  
13 Number 1 is a letter of agreement that appears  
14 to be between the City of Auburn and the CWH  
15 Research, Inc. Is that the agreement or the  
16 contract that you spoke about just a moment ago  
17 between the research company and the City of  
18 Auburn?

19 A. This appears to be the agreement.

20 Q. And how did you go about finding this company?

21 A. This company was recommended to me by a lady  
22 named Kathleen Robinson.

23 Q. Who is she?

1       A.     Kathleen Robinson was the individual who  
2             formerly did promotion processes for the ranks  
3             of lieutenant and captain for the City of  
4             Auburn.

5       Q.     What was your understanding of what this company  
6             was supposed to do with regard to the battalion  
7             chief promotion in May of 2006?

8       A.     They were to develop a job-related neutral  
9             selection process for us to use to make  
10            promotions to the rank of battalion chief.

11      Q.     Had the City of Auburn ever done any contract  
12             work with this firm before?

13      A.     No.

14      Q.     You're not testifying that this company, CWH, is  
15             an outside assessment center, are you?

16      A.     I ...

17      Q.     Do you know what an assessment center is?

18      A.     I know what an assessment center is.

19      Q.     This company is not an assessment center, are  
20             they?

21                       MR. MORGAN: Object to the form.

22      A.     An assessment center is not a brick-and-mortar  
23             structure.

1 Q. Right.

2 Well, are you familiar with the 1991  
3 settlement order in the McCormick case?

4 MR. MORGAN: Object to the form. In  
5 the what case?

6 MR. HORSLEY: I got the name wrong.  
7 Hammock case.

8 MR. MORGAN: Object to the form.

9 A. Yes.

10 Q. You're familiar with the order approving a  
11 settlement agreement that requires an assessment  
12 center for certain promotions within the Auburn  
13 City Fire Division?

14 A. I am.

15 Q. Is it your testimony that Plaintiff's Exhibit  
16 Number 1 qualifies as an assessment center  
17 pursuant to that order?

18 A. No.

19 Q. Is it your testimony that this company -- that  
20 the hiring of this company qualifies as an  
21 assessment center pursuant to the order in the  
22 Hammock case?

23 MR. MORGAN: Object to the form.

1 A. No.

2 Q. Is it true that this company, CWH, was hired to  
3 administer a written test that anyone applying  
4 for the battalion chief promotion had to take?  
5 Is that correct?

6 A. They developed a neutral job-related process for  
7 us to use in making a promotion decision.

8 Q. Other than administering the written test that  
9 was taken by all the battalion chief applicants,  
10 what else did they do to participate in the  
11 battalion chief promotion process?

12 A. They recommended and developed a series of  
13 exercises to help determine who was the best  
14 candidate for the promotion.

15 Q. Was that provided to the City in some written  
16 form?

17 A. The exercises?

18 Q. Yes, sir.

19 A. Yes.

20 Q. Do you know if the City of Auburn still has that  
21 document that details the exercises?

22 A. In one form, yes.

23 Q. What do you mean in one form?

1 A. Well, the orientation manual is one form.

2 Q. What other form do y'all have it in writing?

3 A. There was a report -- Well, I think the  
4 Candidate Feedback Reports provided some  
5 information about it. There was a final report  
6 about the overall process that provided details  
7 about it.

8 Q. Is the orientation manual that you just  
9 testified about -- Is Plaintiff's Exhibit Number  
10 2 a copy of that orientation manual?

11 (Plaintiff's Exhibit 2 marked for  
12 identification.)

13 A. It appears to be at least part of it.

14 Q. Part of it? What else --

15 A. I can't tell.

16 Q. Your testimony is Plaintiff's Exhibit 2 is part  
17 of the orientation manual submitted by CWH; is  
18 that correct?

19 A. It appears to be.

20 Q. Does the City of Auburn to your knowledge still  
21 have the actual test that was administered to  
22 the battalion chief applicants?

23 A. We don't.

1 Q. What happened to that test?

2 A. The test was returned to CWH.

3 Q. You said earlier that you spoke with an  
4 individual about hiring CWH. Tell me what  
5 happened that participated your seeing the need  
6 to hire a company such as CWH to get involved in  
7 the battalion chief promotion.

8 A. The settlement agreement in 1991 called for a  
9 process utilizing outside assessors and a  
10 consultant. Kathleen Robinson was the person  
11 that did that for us. She retired.

12 Q. Robinson?

13 A. Yes.

14 Q. And she's the one who you consulted with in  
15 hiring CWH, correct?

16 A. I asked her if she was available to do this  
17 work, and she said she was retiring and  
18 recommended CWH to me.

19 Q. Had the City of Auburn to your knowledge used a  
20 company like CWH to perform some type of written  
21 test or assessment center prior to the battalion  
22 chief promotion in May of 2006?

23 A. Like CWH?



1 Q. Well, let me rephrase the question.

2 Had the City of Auburn used an outside  
3 assessment center for any promotion within the  
4 fire division since the 1991 settlement order?

5 A. Yes.

6 Q. And what promotions did it use an assessment  
7 center for?

8 A. I believe there was a 1994 captains promotion  
9 and a 1996 lieutenant and captains promotion.

10 Q. If you can, describe the assessment center that  
11 was used for those two promotions.

12 A. To my knowledge it involved a conglomeration of  
13 exercises -- job-related exercises.

14 Q. And it was formulated by whom?

15 A. Kathleen Robinson.

16 Q. And I guess what I'm asking you to do for my  
17 education is define what you believe an outside  
18 assessment center to be.

19 A. An assessment center -- An outside assessment  
20 center would consist of a conglomeration of  
21 devices used -- job-related devices used to  
22 determine who the best candidates were for a  
23 promotion.

1 Q. And by outside assessment center, does that mean  
2 someone or some company has to implement those  
3 processes that is not employed or has any  
4 connection with the City of Auburn?

5 A. I think that's a fair statement.

6 Q. And you said that Kathleen Robinson was in  
7 charge of that for the City of Auburn for a  
8 period of time, correct?

9 A. Correct.

10 Q. Was she employed by the City of Auburn?

11 A. No. She was contracted by the City of Auburn.

12 Q. What was Kathleen Robinson's job to your  
13 knowledge?

14 A. Professionally?

15 Q. Yeah.

16 A. I recall she was involved in testing services at  
17 either Cobb County or DeKalb County in the  
18 Atlanta metro area.

19 Q. So she lives in the Atlanta metro area or did  
20 live in the Atlanta Metro ...

21 A. I assume that's where she lived.

22 Q. Do you know who actually made the decision to  
23 hire Kathleen Robinson to implement the outside

1 assessment center?

2 A. The lawyers involved in the original litigation.

3 Q. The original Clinton Hammock litigation?

4 A. Correct.

5 Q. Do you know if she still lives in the Atlanta  
6 metro area?

7 A. I don't know.

8 Q. Does she have a company name to your knowledge?

9 A. I don't know.

10 Q. You don't know if there's some -- if she's  
11 incorporated under some other name?

12 A. I haven't had any further contact with her.

13 Q. It's your testimony that she developed the  
14 outside assessment center for the 1994 captains  
15 promotion and the 1996 lieutenant promotion; is  
16 that correct?

17 A. That's my understanding.

18 Q. Is it also your understanding that pursuant to  
19 either of those promotions or pursuant to  
20 neither of those promotions there was a written  
21 test given to the applicants with a cutoff  
22 score; is that correct?

23 A. I don't recall there was a written test.

1 Q. You don't recall if there was a written test?

2 A. Right.

3 Q. Are you saying there may have been and you don't  
4 recall?

5 A. I don't -- I was not directly involved in that  
6 process.

7 Q. With regard to the battalion chief promotion in  
8 May of 2006, who at the City of Auburn decided  
9 that there was going to be a written test with a  
10 cutoff score as a factor in the promotion?

11 A. It was a collective decision made by me, the  
12 public safety director, the deputy fire chief,  
13 and CWH.

14 Q. And at that time the deputy fire chief was Lee  
15 Lamar?

16 A. Correct. And the fire chief.

17 Q. Who was Langley?

18 A. Right.

19 And CWH.

20 Q. And CWH.

21 So for the battalion chief promotion, is it  
22 your testimony that you, the public safety  
23 director, the deputy fire chief, the chief got

1           together and decided that there needed to be an  
2           outside assessment center for this promotion,  
3           and you contacted Kathleen Robinson? She had  
4           retired and told you you needed to contact CWH?  
5           Is that the chronology of how it occurred?

6           A.    Yes.

7           Q.    And then the individuals I just named, along  
8           with you, got with CWH, and that group made the  
9           decision that a test with a cutoff score was  
10          going to be given; is that correct?

11          A.    That's correct.

12          Q.    Were you personally involved in meetings with  
13          CWH, Langley, Lamar, the safety director where  
14          y'all discussed with CWH that a test needed to  
15          be given with a cutoff score?

16          A.    Yes.

17          Q.    Is it your testimony that the City of Auburn had  
18          not made that decision before it contracted with  
19          CWH about the test or the cutoff score?

20          A.    Could you repeat the question?

21          Q.    Yeah.

22                   Did you, the public safety director, Lamar,  
23          and Langley make the decision that there needed

1 to be a test with a cutoff score given prior to  
2 the time y'all contracted with CWH?

3 A. No.

4 Q. Do you recall the individual's name that y'all  
5 were dealing with at CWH?

6 A. Primarily Michael Blair.

7 Q. Do you independently recall as you sit here  
8 today meetings with those individuals and  
9 Mr. Blair where the decision was made that a  
10 test was going to be given for the battalion  
11 chief promotion with a cutoff score?

12 A. Yes.

13 Q. Do you recall who actually first recommended  
14 that that test be given?

15 A. The CWH process incorporates a testing option.  
16 Through our discussions it was determined that  
17 giving a test was a good way to evaluate the  
18 subject matter expertise of the candidates in  
19 the area of fire prevention.

20 Q. Did Mr. Blair, the CWH representative, recommend  
21 that a test be given or did he say that that was  
22 a necessary part of CWH's involvement in this  
23 process?

1 MR. HANCOCK: Object to the form.

2 A. As I said, the CWH process incorporated an  
3 option to have a test.

4 Q. It wasn't a requirement; it was an option; is  
5 that correct?

6 A. It was an option, correct.

7 Q. And was it at the City's discretion -- Was it at  
8 the City's discretion to give or not give the  
9 test with a cutoff score?

10 A. Yes.

11 MR. MORGAN: Object to the form.

12 Q. It was?

13 Do you recall whether or not Lee Lamar  
14 suggested that a cutoff score of 70 is something  
15 that he would prefer during those meetings?

16 A. Our discussions included the use of a cutoff  
17 score of 70 percent.

18 Q. Do you recall specifically who suggested the  
19 cutoff score of 70?

20 A. Who first voiced that, I don't know.

21 Q. You don't recall if it was Lee Lamar?

22 A. I know Lee Lamar stated that 70 percent was the  
23 common cutoff score used in the fire service.

1 If people went to the fire college and they took  
2 a test, there was a 70 percent cutoff. I  
3 understand at the National Fire Academy, some of  
4 the courses there have a 70 percent cutoff. Our  
5 practice in other testing procedures in the City  
6 of Auburn had been to use a 70 percent cutoff.  
7 We saw it as something consistent and also in  
8 keeping with tradition in the fire service.

9 Q. Am I correct in saying that the City of Auburn  
10 representatives during these meetings were the  
11 individuals who suggested the 70 cutoff score  
12 rather than the CWH representative?

13 MR. MORGAN: Object to the form.

14 A. I don't know if CWH said you can use a cutoff  
15 score or if we said we want to use a cutoff  
16 score. It was --

17 Q. You don't recall?

18 A. No, I don't.

19 Q. Are you aware that CWH pursuant to administering  
20 this test required that there be a cutoff score?

21 A. No. I think that was our choice.

22 Q. That was your choice? The City of Auburn's  
23 choice?



1 A. It was our, as you stated, discretion.

2 Q. During those meetings about the test, am I  
3 correct that the City of Auburn made the  
4 decision to implement that test as the first  
5 factor in the battalion chief promotion with a  
6 cutoff score, meaning that if you did not meet  
7 the cutoff score, you could not progress further  
8 in the battalion chief promotion process?

9 A. Would you repeat the question?

10 Q. Yeah.

11 Is it true that the -- Isn't it true that  
12 the City of Auburn made the decision that the  
13 test with a cutoff score was the initial factor  
14 in whether an applicant proceeded through the  
15 rest of the process?

16 A. Again, this was a decision made collectively in  
17 consultation with CWH. Had the City said we  
18 don't want to use a cutoff score, I don't think  
19 CWH would have argued with us.

20 Q. CWH didn't care one way or the other whether or  
21 not the City used a cutoff score or whether the  
22 test was a deciding factor if someone got to  
23 progress through the process, did they?

1 MR. MORGAN: Object to the form.

2 A. I'm not sure I'd go that far.

3 Q. Well, CWH was hired as a consulting firm to  
4 administer a test; is that correct?

5 A. They were designed to --

6 MR. MORGAN: Object to the form.

7 A. -- hired to design and provide consulting  
8 services to the City so that we had a fair  
9 promotional process.

10 Q. And if the City had decided that the test would  
11 be administered by CWH and that there would not  
12 be a cutoff score and that the test would simply  
13 be part of a cumulative process for the  
14 battalion chief promotion, CWH to your knowledge  
15 wouldn't have objected to that; is that correct?

16 MR. MORGAN: Object to the form.

17 A. I think they would have allowed us to do that.

18 Q. They would have allowed you to do that?

19 A. (Witness nods head positively.)

20 Q. You've got to answer out loud.

21 They would have allowed you to do that,  
22 correct?

23 A. Yes.

1 Q. My point is: The City of Auburn had the  
2 discretion as to how the test and the cutoff  
3 score would be implemented into the promotional  
4 process. Is that a fair statement?

5 A. Yes.

6 Q. CWH didn't make that decision, did they?

7 MR. MORGAN: He's answered that about  
8 five times.

9 Q. CWH didn't make that decision, did they?

10 MR. MORGAN: Object to the form.

11 A. It was a collective decision, but ultimately it  
12 was the City's discretion to --

13 Q. Well, if the City had the ultimate discretion,  
14 then CWH didn't have any discretion to decide  
15 how that test would play a part in the  
16 promotional process, did they?

17 MR. MORGAN: Object to the form.

18 A. We certainly listened carefully to their advice.

19 Q. They could make recommendations but they could  
20 not make decisions; is that correct?

21 A. Correct.

22 Q. Do you recall -- I may have asked this  
23 question. I simply can't remember.

1           Do you recall if CWH recommended that the  
2           test be the deciding factor -- the test with a  
3           cutoff score be the deciding factor as to  
4           whether or not an applicant proceeded through  
5           the battalion chief promotional process?

6       A.    Again, this was a collective decision made in  
7           discussion with CWH.

8       Q.    And if CWH is going to say that Lee Lamar  
9           suggested the 70 cutoff score, you don't have  
10          anything to dispute that, do you?

11      A.    No.

12      Q.    Tell me why you and the public safety director  
13           and Lee Lamar and Langley decided that CWH  
14           needed to be hired in order to conduct the  
15           outside assessment center if the City of Auburn  
16           at that time in May of 2006 -- Well, the test  
17           was given before then. Let's just say between  
18           February and May of 2006. Let me start over.

19           Why did you and the public safety director,  
20           Lee Lamar, and Langley decide during that time  
21           period from February through May of 2006 that an  
22           outside assessment center needed to take place  
23           pursuant to the battalion chief promotion if the

1 City was under the impression that the 1991  
2 order had expired?

3 MR. MORGAN: Object to the form.

4 Q. When I speak of the 1991 order -- Let's go ahead  
5 and mark it and we'll talk about it in detail in  
6 a little while.

7 But you're familiar with the Clinton Hammock  
8 order approving the settlement agreement,  
9 correct?

10 A. I am.

11 (Plaintiff's Exhibit 3 marked for  
12 identification.)

13 Q. And that's the document that required the City  
14 of Auburn to conduct an outside assessment  
15 center back then for any captain promotion or  
16 any lieutenant promotion, correct?

17 A. Correct.

18 Q. Tell me, then, if the City believed that that  
19 order had either expired or that the court no  
20 longer had jurisdiction over the City of  
21 Auburn's promotional practices, why did you and  
22 these other gentlemen feel that an assessment  
23 center was necessary for this promotion?

1 MR. MORGAN: Object to the form.

2 A. I think -- I won't speculate. We had  
3 considered the -- if the order approving  
4 settlement was still in effect with counsel  
5 narrowly construed to the issue of the matter of  
6 reclassifying team leaders to lieutenant. We  
7 came to a point where we needed to make a  
8 promotion to fill some vacant positions at the  
9 battalion chief level. We felt that the best  
10 course of action -- since we had not gone  
11 through a process as we had with the team leader  
12 to lieutenant reclassification, the best course  
13 of action was to follow what was stipulated in  
14 the assessment center or -- I'm sorry -- in the  
15 settlement agreement from 1991.

16 Q. Have you read the order approving settlement  
17 agreement marked as Plaintiff's Exhibit 3?

18 A. I have.

19 Q. Have you read it in preparation for this  
20 deposition?

21 A. I have.

22 Q. Do you know of anywhere in that order where it  
23 states that a written test with a cutoff score

1 is required to be a part of the assessment  
2 center?

3 A. It does not specifically say that.

4 Q. Again, I'm not sure I followed you when you were  
5 talking about the lieutenant or the team leader  
6 reclassification to lieutenant. I think you  
7 said that during that process --

8 Well, tell me what you said. I don't want  
9 to mischaracterize your testimony. Tell me  
10 again why an assessment center -- why the court  
11 order was not followed pursuant to the team  
12 leader to lieutenant reclassification.

13 MR. MORGAN: Object to the form.

14 Q. You'll agree with me that the order approving  
15 settlement agreement was not complied with  
16 pursuant to the February 1, 2006  
17 reclassification of team leaders to lieutenants;  
18 is that correct?

19 MR. MORGAN: Object to the form.

20 Q. Will you agree with me on that?

21 A. I would agree that we did some research with  
22 legal counsel, and it was determined that the  
23 settlement agreement was no longer in force.

1 And at that point, based on a petition from team  
2 leaders, based on the interest of stimulating  
3 morale in the department, based on  
4 considerations of the cost of conducting  
5 assessment centers, we determined that changing  
6 the job title of equal -- of a position that  
7 had -- that was equal to lieutenant was an  
8 appropriate thing to do.

9 Q. So are you testifying that a firefighter or a  
10 City of Auburn Fire Division employee that  
11 moved -- prior to February 1 of 2006, before  
12 that time, a firefighter that moved from team  
13 leader to lieutenant was not considered to be a  
14 promotion?

15 A. It was not a promotion.

16 Q. It was not a promotion?

17 A. No.

18 Q. Is that correct?

19 A. Correct.

20 Q. When Lieutenant Stevens went from team leader to  
21 lieutenant in 1996, was that not a promotion?

22 MR. MORGAN: Object to the form.

23 A. No.



1 Q. It was not?

2 You've already testified that during that  
3 process, an outside assessment center was used,  
4 correct?

5 A. It was.

6 (Plaintiff's Exhibit 4 marked for  
7 identification.)

8 Q. I'll show what you I've marked as Plaintiff's  
9 Exhibit Number 4.

10 MR. MORGAN: Was he a team leader?

11 MR. HORSLEY: Well, hold on.

12 Q. When was the team leader position started at the  
13 City of Auburn Fire Division?

14 A. I think it was started sometime in 1989 or 1990.

15 Q. In 1996 when Gerald Stephens was promoted to  
16 lieutenant --

17 I'm going to show you what's marked as  
18 Plaintiff's Exhibit Number 4. Have you ever  
19 seen that letter?

20 A. I've seen a copy of this.

21 Q. Is it your understanding that he was promoted  
22 from the team leader position or from the  
23 firefighter position to lieutenant?

1 A. I understand he was a firefighter.

2 Q. Why did he not have to be promoted to team  
3 leader before being promoted to lieutenant back  
4 in 1996?

5 MR. MORGAN: Object to the form.

6 A. I'm sorry. Repeat the question.

7 Q. Yes.

8 Why was he not required to be promoted to  
9 team leader before being promoted to lieutenant  
10 back in 1996?

11 A. To my knowledge he didn't apply for team leader.

12 Q. Well, my question is: You're saying that team  
13 leader and lieutenant were the exact same  
14 position before February 1 of 2006, correct?

15 A. Correct.

16 Q. Then why do they have different names?

17 A. One was -- One evolved out of the court-ordered  
18 settlement and one evolved out of traditional  
19 rank structure in the fire service.

20 Q. Which one evolved out of the court-ordered  
21 settlement?

22 A. Team leader.

23 Q. And is there a pay differential between -- Was

1           there a pay differential between the job of team  
2           leader and lieutenant before February 1 of 2006?

3       A.    No.

4       Q.    None?

5       A.    None.

6       Q.    All team leaders and all lieutenants made the  
7           exact same wage. Is that your testimony?

8       A.    Yes. They were paid in the same pay grade.

9       Q.    What about bars? Do firemen at the City of  
10           Auburn have pins that they wear that have a  
11           certain number of bars on them?

12      A.    I'm aware that there's some insignia that they  
13           wear.

14      Q.    Is the insignia that the team leaders wore  
15           before February 1 of '06 the same as the  
16           lieutenants wore prior to that time?

17      A.    I don't know.

18      Q.    You don't know?

19      A.    (Witness nods head negatively.)

20      Q.    Do you know why all these team leaders wanted to  
21           be reclassified as lieutenants if the job was  
22           the same and they were making the same money?

23      A.    I think they stipulated that in their petition.

1 Q. What do you recall that stipulation to be?

2 A. I believe they said that team leader is not a  
3 recognized title in the fire service. When they  
4 went to other training, they had to explain what  
5 a team leader was. When they went to other --  
6 to assist other fire agencies, they had to  
7 explain what their training was. They preferred  
8 to be called lieutenants because that was a  
9 recognized, more traditional job title for a  
10 company officer in the fire service.

11 Q. So from their standpoint -- you would agree with  
12 me from a convenience standpoint, it was an  
13 actual promotion from team leader to lieutenant?

14 A. I'm sorry?

15 Q. From a convenience to the team leaders, it was a  
16 promotion to go from team leader to lieutenant;  
17 is that correct?

18 MR. MORGAN: Object to the form.

19 A. No.

20 Q. And you don't know if the insignia had more bars  
21 as a lieutenant than a team leader?

22 A. I don't.

23 Q. In February 1 of 2006, who were the lieutenants

1 in the Auburn Fire Division to your knowledge?

2 A. Gerald Stephens.

3 Q. He's the only one, correct?

4 A. Yes.

5 Q. He's an Afro-American, correct?

6 A. He is.

7 Q. Are you aware -- How long had he been the only  
8 lieutenant in the Auburn Fire Division to your  
9 knowledge?

10 A. I don't know.

11 Q. And he was appointed or promoted to lieutenant  
12 back in 1996, correct?

13 A. Correct.

14 Q. Did you ever hear or have you heard of  
15 dissatisfaction among the team leaders at that  
16 time prior to February 1 of '06 that Gerald  
17 Stephens was the only lieutenant in the  
18 department?

19 A. Can you repeat the question?

20 Q. Yeah.

21 Did you ever hear or have you ever heard of  
22 dissatisfaction or discontent among the team  
23 leaders at that time prior to February 1 of '06

1           that Gerald Stephens was the only lieutenant in  
2           the Auburn Fire Division?

3       A.    Not that I recall.

4       Q.    Have you ever heard of that?

5       A.    Not that I recall.

6       Q.    Is it your testimony that Gerald Stephens was  
7           not a higher ranking employee of the City of  
8           Auburn Fire Division prior to February 1 of '06  
9           than the team leaders?

10      A.    I'm sorry. Would you repeat that?

11      Q.    Is it your testimony that Gerald Stephens was  
12           not a higher ranking Auburn Fire Division  
13           employee prior to February 1 of '06 than were  
14           the team leaders?

15      A.    That is my testimony.

16                   MR. MORGAN: Object to the form.

17      Q.    He was not a higher ranking employee?

18      A.    He was not.

19      Q.    I don't want to get into privileged information  
20           between you and attorneys. You said that you  
21           consulted with legal counsel prior to the time  
22           that you reclassified the team leaders to  
23           lieutenants and decided that the court order had

1           expired or that it was no longer in force; is  
2           that correct?

3           A.     Correct.

4           Q.     Who was your legal counsel at that time?

5           A.     The city attorney.

6           Q.     And was that Arnold Umbach?

7           A.     It is.

8           Q.     Anyone else that you or the City consulted with  
9           in reaching the conclusion that the 1991 order  
10          had expired or was no longer in force?

11          A.     Not directly. I don't know if Arnold had --

12          Q.     Yeah. What I'm saying is: The City came to  
13          that conclusion based on discussions with legal  
14          counsel, Arnold Umbach, and that's the only way  
15          the City came to that conclusion. Is that a  
16          correct statement?

17          A.     That's correct.

18          Q.     And, again, I don't want to know what Arnold  
19          Umbach told you or anyone else, but do you have  
20          knowledge as to why Arnold Umbach told the City  
21          that the 1991 settlement agreement was no longer  
22          in force?

23          A.     I do know what he told me.

1 MR. HORSLEY: Can I ask him that?

2 MR. MORGAN: Yeah.

3 Q. What did he tell you?

4 A. He told us that -- he told me that --

5 MR. MORGAN: Let me say this.

6 We're --

7 MR. HORSLEY: You're not waiving any  
8 privilege. You're not waiving any  
9 privilege.

10 MR. MORGAN: Okay.

11 A. He told me that in the absence of a specific  
12 termination date, all contracts have -- they  
13 come to an end based on changing conditions,  
14 changing situations, that he had learned that  
15 the court did not retain jurisdiction of this  
16 settlement and that basically this was a  
17 contractual matter between the City and the  
18 plaintiffs.

19 Q. Did he tell you when the court no longer  
20 retained jurisdiction over this?

21 A. A point in time?

22 Q. Yeah.

23 A. No.



1 Q. Was it your understanding that after the court  
2 signed off on the order that they essentially  
3 lost jurisdiction over what was contained within  
4 the order? Is that your understanding?

5 MR. MORGAN: Object to the form.

6 A. That's the information I received.

7 Q. So the order was essentially ineffective the day  
8 after it was signed? Is that your testimony?

9 MR. MORGAN: Object to the form.

10 A. No.

11 Q. Well, what was your understanding of when that  
12 order became ineffective or when the court lost  
13 jurisdiction over the contents of that order?

14 MR. MORGAN: Object to the form.

15 A. It's not something I really contemplated until  
16 you just asked me this question.

17 Q. You don't know -- don't have any knowledge over  
18 a time -- a date and time when the court lost  
19 jurisdiction over the 1991 order? Is that your  
20 testimony?

21 MR. MORGAN: Object to the form.

22 A. Based on what I was told by the city attorney,  
23 presumably they did not retain jurisdiction

1 after the settlement.

2 Q. And that was my question a moment ago. Your  
3 belief today and upon discussing it with Arnold  
4 Umbach was that essentially the United States  
5 District Court for the Middle District of  
6 Alabama Eastern Division lost jurisdiction over  
7 the order that it entered in 1991 essentially  
8 the day after it signed the order; is that  
9 correct?

10 MR. MORGAN: Object to the form.

11 Q. I think that's what you said.

12 A. Not being a lawyer, that's the way it appears.

13 MR. MORGAN: Are you at a stopping  
14 point?

15 MR. HORSLEY: Yeah. We can take a  
16 break. That's fine.

17 (Brief recess.)

18 Q. (Continuing by Mr. Horsley) I want to go back  
19 for a moment to the distinction between the team  
20 leader and lieutenant position prior to February  
21 1 of 2006. That's when that change became  
22 effective, correct, when all the team leaders  
23 became lieutenants?

1 A. February 1.

2 Q. February 1 of 2006?

3 A. That's correct.

4 Q. Isn't it true that prior to that time, the team  
5 leader position was a temporary position? It  
6 was a full-time job but a temporary position; is  
7 that correct?

8 A. My recollection is that it started as a  
9 temporary position and at some point since 1989  
10 it became an assignment that didn't go away.

11 Q. And weren't the team leaders in some respects  
12 required to oversee the student firefighters?

13 A. They did oversee student firefighters.

14 Q. Was that a part of their job duties?

15 A. A part of their job duties was to provide  
16 front-line supervision -- first-line supervision  
17 over fire suppression personnel.

18 Q. Student firefighters?

19 A. Student firefighters included, yeah.

20 Q. Was that also a job task of the lieutenants  
21 prior to February 1 of 2006?

22 A. I believe lieutenants did oversee student  
23 firefighters. I don't -- That's my belief.

1 Q. But wasn't the team leader position specifically  
2 created in order to oversee the student  
3 firefighters?

4 A. I believe it was.

5 Q. Was the lieutenant position ever specifically  
6 created in order to oversee student  
7 firefighters?

8 A. The lieutenant position existed prior to the  
9 creation of student firefighters.

10 Q. It has never been the primary job task of a  
11 lieutenant to oversee student firefighters; is  
12 that correct?

13 MR. MORGAN: Object to the form.

14 A. Would you repeat that?

15 Q. It has never been a primary job duty of a  
16 lieutenant with the Auburn Fire Division to  
17 oversee the student firefighters; is that  
18 correct?

19 MR. MORGAN: Object to the form.

20 A. I can't agree with that.

21 Q. You cannot agree with that?

22 A. No.

23 Q. Will you agree with me that the primary task of

1 a team leader was to oversee the student  
2 firefighters?

3 A. At one time.

4 Q. When?

5 A. The late '80s, early '90s.

6 Q. So it's your testimony that in 2005, the team  
7 leaders were no longer required to oversee the  
8 student firefighters?

9 A. I think they oversaw student firefighters and  
10 also career firefighters.

11 Q. And it's your testimony that their job duties  
12 directly related to student firefighters were  
13 exactly the same as the lieutenants' job duties  
14 related to student firefighters; is that  
15 correct?

16 A. The job descriptions were identical.

17 Q. With respect to student firefighters?

18 A. With respect to supervising personnel.

19 Q. Is your testimony that with respect to the  
20 supervision of student firefighters, the job  
21 duties of team leader and lieutenant were  
22 exactly the same prior to February 1 of '06?

23 MR. MORGAN: Object to the form.

1 A. That's my belief.

2 Q. The City decided through discussions with its  
3 attorney that the outside assessment center was  
4 no longer required because the 1991 court order  
5 was no longer effective with regard to the team  
6 leader reclassification to lieutenants in  
7 February 1 of '06. We've established that.

8 MR. MORGAN: Object to the form.

9 Q. And it sounds to me like you were concerned  
10 about that or the City was concerned about that  
11 and actually consulted with its attorney before  
12 it made that decision to reclassify team leaders  
13 to lieutenants. Is that a fair statement?

14 A. Correct.

15 Q. Why, then, were the battalion chief promotions  
16 at the end of 2005 performed without an outside  
17 assessment center?

18 MR. MORGAN: Do what?

19 A. They were.

20 Q. The battalion chief promotions in 2005 were?

21 MR. MORGAN: Object to the form.

22 A. There wasn't a battalion chief promotion in  
23 2005.

1 Q. When was the last battalion chief promotion  
2 before May of '06?

3 A. 1996. But back then it was called captain or  
4 shift commander.

5 Q. Were Dean Garrett, Johnny Lawrence, Jimmy Brown,  
6 and Danny Leverette not promoted to battalion  
7 chief in 2004 or 2005 to your knowledge?

8 A. They were not.

9 Q. What is your understanding of their job status  
10 in 2004 and '05?

11 A. At some point during that period of time, their  
12 job title changed.

13 Q. From captain to battalion chief?

14 A. From shift commander to battalion chief.

15 Q. And it's your testimony that's not a promotion?

16 A. That's correct.

17 Q. Are you testifying that it's similar to or just  
18 like the reclassification of team leaders to  
19 lieutenants, that shift commanders became  
20 battalion chiefs?

21 A. Their job title was changed.

22 Q. All shift commanders' job titles were changed to  
23 battalion chiefs?

1 A. Correct.

2 Q. And when did that happen?

3 A. I think it was in 2004.

4 Q. Why did that occur?

5 A. The captains/shift commanders had been asking  
6 that their job titles be changed to battalion  
7 chief for quite some time. They met with the  
8 former city manager and requested that their job  
9 titles be changed. I understand that it was a  
10 desire that they had because it was a job title  
11 more in keeping with the fire service, that when  
12 they went to training or conferences, they  
13 wanted to introduce themselves as battalion  
14 chief. They made their petition to the city  
15 manager, and he agreed to change their job  
16 title. There was no change in job description.  
17 There was no change in compensation whatsoever.

18 Q. Were those individuals that I just named all  
19 white men?

20 A. Yes.

21 Q. And, again, that change was made at their  
22 request, for lack of a better word, convenience  
23 to them; is that correct?



1 MR. MORGAN: Object to the form.

2 A. I don't know about convenience, but to satisfy  
3 what they wanted to be called.

4 Q. But it's your testimony that was not a  
5 promotion?

6 A. It was not.

7 Q. Again, the insignia -- are you familiar with the  
8 insignia that the shift commanders wore back  
9 then?

10 A. Not until just recently.

11 Q. Was that insignia the same as what a battalion  
12 chief wore?

13 MR. MORGAN: Which one?

14 MR. HORSLEY: The shift commander.

15 A. I have heard there was a change in the jewelry  
16 that they put on their collars.

17 Q. Once they became battalion chiefs, they wore a  
18 different insignia; is that correct? Once the  
19 shift commanders became battalion chiefs, the  
20 individuals we just named; is that correct?

21 A. I heard something about there was a bugle added  
22 to their collar.

23 Q. Do you know whether or not the insignia that the

1 shift commanders were included two bars and the  
2 ones that the battalion chiefs were included  
3 three bars?

4 A. I don't know that.

5 Q. You don't know?

6 A. (Witness nods head negatively.)

7 Q. Do you have any reason to dispute that if that's  
8 what --

9 MR. MORGAN: Object to the form.

10 A. It is what it is.

11 Q. But you don't know?

12 A. I don't know.

13 Q. Once again, the reclassification or retitlement  
14 of -- the reclassification of the shift  
15 commanders to battalion chiefs was done without  
16 an outside assessment center, correct?

17 MR. MORGAN: Object to the form.

18 A. Correct.

19 Q. There were no tests given to those individuals,  
20 correct?

21 A. There was no promotion.

22 Q. I understand. That's not my question.

23 A. There was no test.

1 Q. There were no tests given to those individuals,  
2 correct?

3 A. Correct.

4 MR. MORGAN: Wait a minute. There was  
5 a test when they were promoted to  
6 captain or shift commander so  
7 object to the form of that.

8 MR. HORSLEY: I was asking about the  
9 reclassification. He said it was  
10 not a promotion. I was asking  
11 about the reclassification from  
12 shift commander to battalion  
13 chief.

14 MR. MORGAN: When they were renamed  
15 from shift commander to battalion  
16 chief, was there a promotion given  
17 to rename them? Is that the  
18 question?

19 MR. HORSLEY: No. My question is:  
20 Was there a test given?

21 MR. MORGAN: When they are renamed?

22 MR. HORSLEY: Whatever we're calling  
23 it. When they are reclassified.

1 Q. When they became battalion chiefs, they did not  
2 have to take a test, correct?

3 MR. MORGAN: Object to the form.

4 A. When their job title was changed from shift  
5 commander to battalion chief, there was not a  
6 test given.

7 Q. They were not required to undergo an outside  
8 assessment center pursuant to that change,  
9 correct?

10 A. It was not necessary.

11 Q. When did the position of captain change to the  
12 position of battalion chief?

13 A. The position of captain changed to shift  
14 commander.

15 Q. When was that?

16 A. Mid-'90s. I don't know.

17 Q. Why was that change made?

18 A. I don't know that either.

19 Q. You don't have any information about why the  
20 position of captain was changed to shift  
21 commander?

22 A. I don't.

23 Q. The order that we've been --

1 A. Let me clarify that.

2 Q. Okay.

3 A. You asked do I have any information?

4 Q. Uh-huh (positive response).

5 A. I don't recall what -- who made that decision;  
6 why it was done.

7 Q. You'll agree with me that that change from  
8 captain to shift commander occurred subsequent  
9 to Plaintiff's Exhibit 3, which is the Hammock  
10 order approving the settlement agreement,  
11 correct?

12 A. Correct.

13 Q. Are you aware that that order specifically --  
14 whether it was effective or not effective, that  
15 order specifically requires that any promotion  
16 to captain requires an outside assessment  
17 center? You're aware of that, right?

18 MR. MORGAN: Object to the form.

19 A. Yes.

20 Q. So it's your testimony that for some reason  
21 subsequent to this order, the position of  
22 captain was renamed shift commander, correct?

23 A. Correct.

1 Q. And you don't know why; is that correct?

2 A. Right.

3 Q. It's also your testimony that subsequent to this  
4 order marked as Exhibit 3 that there was a  
5 reclassification in 2004 or '05 from shift  
6 commander to captain -- excuse me -- from  
7 captain to shift commander and that the captain  
8 position no longer existed, correct?

9 MR. MORGAN: Object to the form.

10 A. What date did you say?

11 Q. I think we established it was either -- I think  
12 you said '04. It was in 2004.

13 A. I said in '04. I believe in '04 the job title  
14 changed from shift commander to battalion chief.

15 Q. When did it change from -- I'm sorry. That's my  
16 fault. It was in the mid-'90s that it changed  
17 from captain to shift commander?

18 A. I think so.

19 Q. Subsequent to the 1991 order, correct?

20 A. Correct.

21 Q. Subsequent to that order which specifically  
22 addresses the outside assessment for captain  
23 promotions, the captain position was essentially

1           eliminated by the department, correct?

2                   MR. MORGAN: Object to the form.

3       A.     No.

4       Q.     The title of captain was eliminated by the  
5           department, correct?

6                   MR. MORGAN: Object to the form.

7       A.     Correct.

8       Q.     You agree with that, the title of captain was  
9           eliminated subsequent to the order?

10      A.     It was changed to shift commander.

11                   (Pleading's Exhibits 7 & 8 marked for  
12           identification.)

13      Q.     I'll show you what I've marked as Plaintiff's  
14           Exhibits 5 and 6.

15                   MR. MORGAN: Richard, we've gone on  
16           about this, but the change in name  
17           from team leader to lieutenant is  
18           not an issue in this case, and I  
19           don't know why we're spending so  
20           much time on it. I mean, that's  
21           not a claim in this lawsuit.

22                   MR. HORSLEY: I think I'm entitled to  
23           ask questions about the history of

1 the department and the changes  
2 they've made and the motivations  
3 behind them.

4 Q. Have you ever seen Plaintiff's Exhibits 5 and 6?

5 (Off-the-record discussion.)

6 MR. HORSLEY: I'm marking these as 7  
7 and 8. Seven is the Proposed  
8 Modification of Fire Lieutenant  
9 Promotional process signed by  
10 Christopher Turner, and 8 is the  
11 same thing signed by Gerald  
12 Stephens.

13 Q. Have you seen those two documents?

14 A. I have.

15 Q. And do you recall who made the decision to issue  
16 these documents to the City of Auburn  
17 firefighters?

18 A. Ultimately it would have been the city manager.

19 Q. Who was ...

20 A. David Watkins.

21 Q. And you'll agree with me that in both of these  
22 documents -- both of these documents are  
23 addressing the reclassification of team leaders



1 to lieutenants; is that correct?

2 A. That's correct.

3 Q. Do you know why these memos or documents were  
4 given to Gerald Stephens and Christopher Turner?

5 A. They were given to all affected members of the  
6 fire division. They were given to them because  
7 we wanted their input. We wanted to offer full  
8 disclosure. And because the city attorney said  
9 this essentially was a contractual matter  
10 between the plaintiffs and the City, we felt  
11 this was a good way to go about getting the  
12 input regarding their preference as to this  
13 particular matter.

14 Q. The preference to the particular matter of  
15 reclassifying team leaders to lieutenants?

16 A. Changing their job title from team leader to  
17 lieutenant, reclassifying, yes.

18 Q. And Eddie Ogletree would have been one of those  
19 individuals, correct?

20 A. Eddie Ogletree was a team leader who supported  
21 that decision.

22 Q. Well, he signed the document agreeing to it,  
23 correct?

1 MR. MORGAN: Object to the form.

2 Q. Do you have --

3 MR. MORGAN: We have that. We have  
4 the one that he signed. The  
5 second he claimed he didn't sign,  
6 yeah, we've got it.

7 A. He stated: I agree with the proposal.

8 Q. And did you witness Mr. Ogletree sign that  
9 document?

10 A. No.

11 Q. Do you know if the first page was attached to it  
12 when he signed it?

13 A. No.

14 Q. Even though you had certain members of the fire  
15 department that disagreed with the  
16 reclassification, the City did it anyway,  
17 correct?

18 A. After we met with those individuals to  
19 understand their concerns.

20 Q. And in both 7 and 8, it states that the  
21 court-approved assessment center process  
22 submitted for fire lieutenant will be considered  
23 to have expired, correct?

1 A. Correct.

2 Q. That's in paragraph 1 at the bottom of the first  
3 page; is that correct?

4 A. That's correct.

5 Q. If it was your position and the City's position  
6 at that time that, number one, the settlement  
7 order was no longer in effect and that this was  
8 not a promotion -- it was simply a  
9 reclassification -- why are you addressing the  
10 outside assessment center required by the order  
11 in these two documents?

12 MR. MORGAN: Object to the form.

13 Q. I mean, if it's not an issue because it's not a  
14 promotion and the order is not in force anyway,  
15 why do you have to send out this document for  
16 people to sign that specifically addresses the  
17 assessment center and the fact that you consider  
18 it to have expired?

19 MR. MORGAN: Object to the form.

20 A. Because --

21 MR. MORGAN: The document speaks for  
22 itself.

23 Q. Go ahead.

1       A.     Because the city attorney said this was  
2             essentially a contractual matter between the  
3             plaintiffs and the City, and we were trying to  
4             provide full disclosure as to what the  
5             implications of this proposal meant before we  
6             moved forward.

7       Q.     But your earlier testimony made it very clear  
8             this was not a promotion, correct?

9       A.     Correct.

10      Q.     Then why are you required to send out documents  
11             asking for the approval when this is not a  
12             promotion? It's simply a reclassification.

13                   MR. MORGAN: Object to the form.

14                   Asked and answered.

15      Q.     Is there a reason why you felt you needed to  
16             send out these documents if this was not a  
17             promotion?

18      A.     We were concerned that if we didn't take this  
19             step, understand their preferences, then it  
20             would potentially invalidate moving them from  
21             team leader to lieutenant.

22      Q.     And even though some people disagreed with it,  
23             y'all went ahead and reclassified them, correct?

1 A. After we met with them to understand what their  
2 concerns were.

3 Q. If February 1 of 2006 the City had decided the  
4 order was no longer in effect and outside  
5 assessment centers were not required, why was an  
6 outside assessment center used or why was it  
7 allegedly used for the battalion chief promotion  
8 in May of 2006?

9 MR. MORGAN: Object to the form.

10 A. In regard to the --

11 Q. Well, let me ask you this. Is it your position  
12 that an outside assessment center that complies  
13 with the court order of 1991 was, in fact,  
14 utilized for the 2006 battalion chief promotion?

15 MR. MORGAN: Object to the form.

16 A. Yes.

17 Q. Why did the City feel it necessary to use the  
18 outside assessment center for the battalion  
19 chief promotion in 2006 if it was the City's  
20 position that the order was no longer in effect?

21 MR. MORGAN: Object to the form.

22 A. As I've indicated previously, this matter  
23 regarding the team leaders being changed in job

1 title to lieutenant was very narrowly focused on  
2 in regard to the settlement agreement. We did  
3 not address the issue of assessment center  
4 processes or the process for promotion to  
5 battalion chief or captain or shift commander,  
6 whatever you want to call it, in this effort or  
7 in this initiative presented to us by the team  
8 leaders.

9 Q. Are you familiar with somebody named Stephanie  
10 King?

11 A. I am.

12 Q. Who is she?

13 A. She is our senior HR generalist.

14 Q. Still?

15 A. She is.

16 (Plaintiff's Exhibit 5 marked for  
17 identification.)

18 Q. Let me show you what I've marked as Plaintiff's  
19 Exhibit 5. This has just been provided to me  
20 today. It's a series of e-mails, some of which  
21 you sent, some of which you received, some  
22 Mr. Lamar sent, received. Take a look at those,  
23 and I'm going to ask you a couple of questions

1 about them.

2 MR. MORGAN: Where did you get this  
3 document?

4 MR. HORSLEY: From Will Hancock.

5 MR. HANCOCK: That's what I sent you,  
6 Randall. Those are the e-mails  
7 you requested I think after  
8 Mr. Turner's deposition. I sent  
9 them the following week.

10 Q. Have you seen that exhibit before?

11 A. I have.

12 Q. The only question I'm going to ask you is: Does  
13 it appear to be an accurate reflection of  
14 e-mails that were sent between the City of  
15 Auburn employees and CWH representatives about  
16 the battalion chief promotion test and  
17 assessment center?

18 MR. MORGAN: Object to the form.

19 A. No.

20 Q. It does not? How is it not e-mails sent --

21 A. Well, chronologically I'm puzzled by how I got  
22 this e-mail at 1:51. I responded at 2:55. Lee  
23 Lamar responded at 2:07. I don't understand how

1           that happens, how he responded after me or --  
2           before me, but it chronologically appears that  
3           he responded after me.

4       Q.    So you say there's a contradiction in two of the  
5           times when e-mails were apparently sent; is that  
6           correct?

7       A.    I don't understand why that is.  There's a  
8           question in my mind about that.

9       Q.    Do you agree with me that these e-mails were  
10          sent?  Have you seen these e-mails?

11      A.    I believe -- Well, I saw them after Mr. Hancock  
12          provided them.

13      Q.    Do you dispute that these e-mails exist?

14      A.    No.

15      Q.    Do you agree that the e-mails that have your  
16          name on them as being sent by you were sent by  
17          you?

18      A.    Yes.

19      Q.    Did you receive the e-mails that indicate that  
20          you received them on this document?

21      A.    I believe I did.

22      Q.    Do you believe that Lee Lamar sent the e-mails  
23          that his name is on?



1 A. This document would suggest that.

2 Q. The battalion chief promotion that we're talking  
3 about and that actually occurred in May of 2006,  
4 that was a promotion, correct, from -- for  
5 anyone that applied for it; is that correct?

6 A. Correct.

7 Q. Or for anyone who actually received the job,  
8 that was a promotion, correct?

9 A. Correct.

10 Q. It was a promotion in rank and pay; is that  
11 correct?

12 A. Correct.

13 Q. And you'll agree with me that Mr. Stephens and  
14 Mr. Ogletree and Mr. Turner did not receive that  
15 promotion, correct?

16 A. Correct.

17 Q. And you'll agree with me that those are each  
18 Afro-Americans, correct?

19 A. Correct.

20 Q. And you'll agree with me those are the only  
21 Afro-Americans that applied for the battalion  
22 chief promotion at that time, correct?

23 A. Correct.

1 Q. You'll agree with me that the only people who  
2 did receive that promotion were white men,  
3 correct?

4 A. Correct.

5 Q. You'll agree with me that the only people who  
6 made it past the testing phase of that promotion  
7 were white men, correct?

8 MR. MORGAN: Object to the form.

9 A. Correct.

10 Q. The testing phase meaning the test that was  
11 taken with the 70 cutoff score, correct?

12 A. The written test.

13 Q. Yes. The only people that made it past that  
14 point were white, correct?

15 A. Correct.

16 Q. Are you familiar with Mr. Stephens' and  
17 Mr. Ogletree's job history with the City of  
18 Auburn?

19 A. Yes.

20 Q. You're familiar with the jobs they've held and  
21 their work performance. Is that a fair  
22 statement?

23 A. Yes.

1 Q. Other than their not passing the written test,  
2 are you aware of anything about their employment  
3 history with the City of Auburn that would have  
4 kept them from being promoted to battalion  
5 chief?

6 MR. MORGAN: Object to the form.

7 A. They had the same opportunity that everyone else  
8 did.

9 Q. Right. My question though, is: There's not  
10 something that you're aware of that would have  
11 precluded them from that promotion but for not  
12 passing that test; is that correct?

13 MR. MORGAN: Object to the form. Go  
14 ahead.

15 A. Correct. They were eligible, just like everyone  
16 else.

17 Q. But for not passing that test, is it your  
18 testimony that they were qualified to receive  
19 that promotion?

20 MR. MORGAN: Object to the form.

21 A. That is not my testimony.

22 Q. Based on their time in grade, based upon their  
23 seniority, based upon your knowledge of their

1 work ethic and yearly evaluations, do you have  
2 an opinion one way or the other about whether  
3 they were qualified to be battalion chiefs?

4 MR. MORGAN: Object to the form.

5 A. First, time in grade and seniority were not  
6 considered.

7 Q. Why is that?

8 A. How do you consider that?

9 Q. I don't know.

10 A. Exactly.

11 Q. I mean, I guess you consider it by how long  
12 somebody has been there and how long they've  
13 been in a certain position. You're saying that  
14 was not a qualification obviously for the  
15 battalion chief job? Is that what you're  
16 saying?

17 A. Correct.

18 Q. My question, though, was: Other than them not  
19 passing the test, based upon their work history  
20 with the City of Auburn, were they qualified for  
21 that promotion?

22 MR. MORGAN: Object to the form.

23 Asked and answered.

1 A. They were eligible.

2 Q. They were not disqualified for that promotion?

3 A. Correct.

4 Q. Who ultimately received those promotions to  
5 battalion chief? I'll try to help you. I think  
6 it was Joe Lovvorn, Rod Hartsfield, Matt Jordan,  
7 and Joey Darby.

8 A. That's correct.

9 Q. Is that correct?

10 A. Yes.

11 Q. Those were all white males, correct?

12 A. Correct.

13 Q. Would you disagree with me that at the time of  
14 his promotion to battalion chief, Joe Lovvorn  
15 had been with the Auburn Fire Division for  
16 approximately five to six years?

17 A. I don't know exactly.

18 Q. Do you have any reason to disagree with that?

19 MR. MORGAN: Well, the record speaks  
20 for itself.

21 Q. Do you have any reason to disagree with that?

22 MR. MORGAN: Object to the form.

23 A. Does that include his time as a student

1 firefighter?

2 Q. No.

3 A. I think --

4 Q. He's been full-time employed with the City of  
5 Auburn five to six years to your knowledge?

6 A. As a regular firefighter?

7 Q. Yes.

8 A. I don't have any reason to disbelieve that  
9 that's true.

10 MR. MORGAN: Object to the form on  
11 that question.

12 Q. Do you believe that Rod Hartsfield had been with  
13 the Auburn Fire Department for approximately  
14 seven years at the time he was promoted to  
15 battalion chief?

16 MR. MORGAN: Object to the form.

17 A. As a regular employee?

18 Q. Yes, sir.

19 A. I have no reason to disbelieve that's not true.

20 Q. Matt Jordan, five to six years with the Auburn  
21 Fire Division; is that --

22 MR. MORGAN: Object to the form.

23 A. Same stipulation.

1 Q. And the same question with Joey Darby.

2 MR. MORGAN: Object to the form.

3 A. Same stipulation.

4 Q. Do you agree with me that Mr. Stephens and  
5 Mr. Ogletree both had more years of service with  
6 the Auburn Fire Department than any of the  
7 individuals that were promoted to battalion  
8 chief?

9 A. I believe that's true.

10 Q. Do you agree with me that both Mr. Stephens and  
11 Mr. Ogletree had more experience with the Auburn  
12 Fire Department than did the individuals that  
13 received the battalion chief promotion?

14 MR. MORGAN: Object to the form.

15 A. They had worked -- To the extent that they had  
16 been employed longer, ostensibly they had worked  
17 more shifts than these others.

18 Q. So they had more experience?

19 MR. MORGAN: Object to the form.

20 Q. Is that correct?

21 MR. MORGAN: What do you mean by  
22 experience?

23 MR. HORSLEY: Experience as Auburn

1 firefighters working for the  
2 Auburn Fire Department.

3 MR. MORGAN: Are you talking about  
4 seniority?

5 MR. HORSLEY: No. Seniority is just a  
6 number of years. I'm talking  
7 about experience going out and  
8 working for the City of Auburn.

9 Q. Did they have more experience than the people  
10 that were promoted to battalion chief?

11 MR. MORGAN: Object to the form.

12 A. They had more experience as employees of the  
13 City of Auburn to the extent that they had been  
14 employed longer.

15 Q. What jobs with the City of Auburn did the  
16 individuals that were promoted to battalion  
17 chief hold immediately before they were  
18 promoted?

19 A. I think they were all lieutenants.

20 Q. Lieutenants?

21 A. (Witness nods head positively.)

22 Q. Were they in the group that was reclassified  
23 from team leaders to lieutenants, the ones that



1           were promoted?

2                       MR. MORGAN: Promoted to battalion  
3                               chief?

4                       MR. HORSLEY: Yes.

5       A.     They were in that group.

6       Q.     Each of the individuals that were promoted to  
7           battalion chief in May of '06 were in the same  
8           group of individuals that were reclassified from  
9           team leader to lieutenant in February 1 of '06,  
10          correct?

11      A.     Correct.

12      Q.     So how long had they been lieutenants at the  
13           time that they were promoted to battalion  
14           chiefs?

15      A.     They had held the job title of lieutenant from  
16           February 1, 2006.

17      Q.     So --

18      A.     They had been company officers, as I understand  
19           that term in the fire service, for significantly  
20           longer than that.

21      Q.     So they had been lieutenants for four months  
22           approximately; is that correct?

23      A.     Correct.

1 Q. Since they had not been lieutenants for twelve  
2 months, would they have not been probationary  
3 lieutenants at the time that they were promoted  
4 to battalion chiefs?

5 A. No.

6 Q. They were not?

7 A. They were not probationary.

8 Q. Why not?

9 A. Because we made a title change from team leader  
10 to lieutenant. They had already satisfied any  
11 probationary requirements.

12 Q. So it's your testimony that even though they had  
13 only been lieutenants for approximately four  
14 months, they were nonprobationary lieutenants  
15 and entitled to be promoted to battalion chiefs,  
16 correct?

17 A. Correct. For the sake of argument, even if they  
18 had been probationary, they would have been  
19 eligible.

20 Q. Doesn't that conflict with the City of Auburn  
21 personnel policies?

22 A. Not that I'm aware of.

23 Q. Are you familiar with those policies?

1 A. I am.

2 Q. You are? Are you familiar with Section 2.07 of  
3 the City of Auburn personnel policies from  
4 1999? I've marked the whole document as  
5 Plaintiff's Exhibit Number 9.

6 (Plaintiff's Exhibit 9 marked for  
7 identification.)

8 MR. MORGAN: Is that what was in  
9 effect in 2006?

10 MR. HORSLEY: I don't know.

11 Q. Was it?

12 A. No.

13 Q. What was in effect?

14 A. The personnel policies of 2005 as amended.

15 Q. Okay. Look at Section 2.07 of that section and  
16 read it, if you will.

17 A. In the document, the City of Auburn personnel  
18 policies of 1999 labeled such, Section 2.07,  
19 probation, states: The probationary period --

20 Did you want me to read this out loud?

21 Q. No. Just read it to yourself, and I'm going to  
22 ask you a question about it.

23 A. (Witness complies.)

1 Q. Was that section still in effect with the  
2 amended personnel policies of '05 to your  
3 knowledge?

4 A. To my knowledge it was.

5 Q. Does that section not require that a fire  
6 department employee be employed at a certain job  
7 for twelve months before being entitled to a  
8 promotion?

9 A. When an employee --

10 MR. MORGAN: Object to the form. Go  
11 ahead.

12 A. When an employee is promoted -- When an employee  
13 is hired or promoted into a new job, they serve  
14 a probationary period.

15 Q. Of twelve months?

16 A. Of twelve months.

17 Q. And they can't be promoted while they are in  
18 that probationary period, is that correct,  
19 according to the city personnel policies?

20 A. No, that is not correct.

21 Q. That's not correct?

22 A. No.

23 Q. 2.7 does not say that?

1 A. 2.07?

2 Q. Yes, sir.

3 A. It does not say you can't be promoted during the  
4 probationary period.

5 MR. MORGAN: I didn't see it either.

6 Show it.

7 Q. I'm sorry. Section 2.09 regarding promotions  
8 refers back to Section 2.07. Does that section  
9 not say an employee is not entitled to a  
10 promotion until he has served a twelve-month  
11 probationary period?

12 MR. MORGAN: Object to the form.

13 A. No.

14 Q. It refers to a step increase in pay, correct?

15 A. Correct.

16 Q. Does it not state that an increase in pay  
17 requires an employee to serve a probationary  
18 period of twelve months?

19 MR. MORGAN: Object to the form.

20 A. A step increase -- I'm sorry. Repeat the  
21 question.

22 Q. Does that not mean -- Section 2.09 which refers  
23 back to 2.07, does that not mean an employee has

1 to serve a twelve-month probationary period  
2 before he can receive a step increase in pay?

3 A. In that job, correct.

4 Q. So it's your testimony that there's no  
5 requirement through the City of Auburn personnel  
6 policies that an employee serve a twelve-month  
7 probationary period before they can be promoted?

8 A. If a firefighter wanted to apply for a higher  
9 level job within the organization during their  
10 probationary period as a firefighter, they could  
11 certainly do so. And if selected they would be  
12 promoted to that position.

13 Q. And it's your testimony that would not  
14 contradict or conflict in any way with the  
15 personnel policies marked as Plaintiff's Exhibit  
16 9; is that correct?

17 A. It would not.

18 Q. I think I asked this earlier, but I forgot what  
19 your answer was. Is it your testimony that the  
20 individuals that were promoted to battalion  
21 chief in May of '06 were, in fact, probationary  
22 lieutenants?

23 MR. MORGAN: Object to the form.

1 A. That was not my testimony.

2 MR. HORSELY: That's why I asked it  
3 again because I couldn't remember  
4 what his answer was.

5 Q. What was your testimony?

6 A. My testimony was that they were not  
7 probationary. They had received -- I'm sorry.

8 Repeat which question --

9 Q. Yeah. Were they non --

10 A. Which job?

11 Q. Is it your testimony that those individuals that  
12 received the battalion chief promotion were  
13 probationary or nonprobationary lieutenants at  
14 the time of the promotion to battalion chief?

15 A. They were nonprobationary lieutenants when they  
16 were promoted.

17 Q. And, again, they had only been lieutenants for  
18 approximately four months, correct?

19 MR. MORGAN: Object to the form.

20 A. They had held the job title of lieutenant for --  
21 since February 1, 2006.

22 Q. Are you familiar with how many Afro-Americans  
23 or -- Let's say minorities.

1           Are you familiar with how many minorities  
2           the City of Auburn Fire Department has hired  
3           since the year 2004?

4       A.    Off the top of my head, no.

5       Q.    Are you aware that they've hired any?

6       A.    I believe that they have hired student  
7           firefighters that were minorities.

8       Q.    Student firefighters?

9       A.    Yes.

10      Q.    Are you aware of any full-time firemen that the  
11           City has hired since 2000, minority firemen?

12      A.    Not to my knowledge.

13      Q.    And, again, I may be taxing your memory -- and  
14           it's fine if you don't know the answer to this  
15           question -- but since 1991, since the order was  
16           entered, are you aware of how many minorities  
17           the City of Auburn has hired as full-time  
18           firemen?

19      A.    As regular --

20      Q.    Yes, sir.

21      A.    -- firemen?

22           No.

23      Q.    You don't know?



1 A. No.

2 Q. Do you have any knowledge or information that it  
3 would be more than two?

4 MR. MORGAN: Object to the form.

5 A. I don't know if there have been more than two  
6 regular minority firefighters hired since 2000  
7 or ...

8 Q. Since 1991.

9 A. 1991. Sorry.

10 Q. Do you know if there's been more than four  
11 minority firefighters hired since 1991?

12 MR. MORGAN: Object to the form.

13 A. No.

14 Q. And how many minority firefighters are employed  
15 with the City right now? Let's say regular  
16 firefighters first, full-time firemen.

17 A. Three.

18 Q. And that's Chris Turner, Gerald Stephens, and  
19 Eddie Ogletree, correct?

20 A. Correct.

21 Q. And how many student firefighters are there,  
22 minority student firefighters?

23 A. Right now?

1 Q. Uh-huh (positive response).

2 MR. MORGAN: How many?

3 MR. HORSLEY: He said "right now". He  
4 hasn't answered yet.

5 A. I think it's one or two.

6 Q. Did Chief Langley or Lamar, either one of those  
7 gentlemen, ever make the statement to you that  
8 the City of Auburn needed to hire more minority  
9 firefighters?

10 A. Yes.

11 Q. Let's start with Langley first. When has he  
12 made that statement to you?

13 A. I can't tell you a specific time, but it's been  
14 a matter of concern for quite a while that we  
15 have not been able to attract and hire  
16 minorities into the fire division.

17 Q. And Lamar has said that to you as well?

18 A. Yes.

19 Q. It's your position that the City wants to hire  
20 more minorities, but there's been no interest  
21 from minorities to be firefighters with the City  
22 of Auburn?

23 A. That's not my testimony.

1 Q. What is your testimony?

2 A. We have not -- For one reason or another, either  
3 through not getting applications or not being  
4 ranked as number one in the selection process or  
5 for people -- Well, I've already said lack of  
6 applications.

7 It's for those two reasons we've not been  
8 able to develop a strong minority presence in  
9 the fire division.

10 Q. Are you familiar with two student firefighters  
11 by the name of Jeremy Patterson and William  
12 Thompkins?

13 A. I know them. I know their names. I don't know  
14 them.

15 Q. Did they apply for full-time employment with the  
16 City of Auburn Fire Department?

17 A. I don't think they did.

18 Q. So you don't know one way or the other whether  
19 or not they applied with the City of Auburn for  
20 full-time employment?

21 A. One of them did not.

22 Q. Which one?

23 A. I want to say it was Thompkins.

1                   And what was the other?

2           Q.     Jeremy Patterson.

3           A.     I don't think Jeremy Patterson applied.

4           Q.     But Thompkins did?

5           A.     I don't recall that he did.

6           Q.     If he did, you'll agree with me he was not  
7           hired, correct?

8                   MR. MORGAN: Object to the form.

9           A.     Correct.

10          Q.     Leading up to the battalion chief promotion in  
11           May of 2006 when you and Langley and Lamar and  
12           the public safety director were discussing that  
13           promotion, do you recall any discussion about  
14           whether or not the test would make it more  
15           difficult for minorities to be promoted to  
16           battalion chief?

17          A.     No.

18          Q.     That was not discussed, is that correct, at  
19           least when you were present?

20          A.     Not that I recall.

21          Q.     Do you recall any discussion among those  
22           individuals and you about whether or not the  
23           test would make it more difficult for the older

1 members of the fire department to be promoted to  
2 battalion chief?

3 A. I think there was some discussion that the way  
4 the test was structured, which incorporated  
5 situational judgment questions, that that would  
6 help employees that had been with the  
7 organization longer to exercise that knowledge  
8 that they had gained based on experience and  
9 familiarity with the policies, that that would  
10 give -- that that would help them in the testing  
11 process.

12 Q. So your testimony is that y'all had some  
13 discussions about how the test would actually  
14 help the older members of the fire department;  
15 is that correct?

16 A. Actually, I think that was something that CWH  
17 told us.

18 Q. Well, my question was: Do you recall any  
19 discussions between you and those gentlemen  
20 about whether or not the test requirement would  
21 make it more difficult for the older members of  
22 the department to receive that promotion?

23 MR. MORGAN: Object to the form.

1 A. No.

2 Q. You don't recall?

3 A. No.

4 Q. Do you recall the education levels of the four  
5 individuals that received the battalion chief  
6 promotion?

7 A. I think I do.

8 Q. Can you tell me?

9 A. I think they've all got college degrees.

10 Q. Are you aware of whether Mr. Ogletree and  
11 Mr. Stephens had college degrees at the time  
12 they applied for battalion chief promotion?

13 A. I don't think that they had completed their  
14 college education.

15 Q. Had they been out of school -- formal school for  
16 a much longer period than the individuals that  
17 were promoted to battalion chief to your  
18 knowledge?

19 A. To my knowledge, yes.

20 Q. Do you agree with me that someone who is closer  
21 to being out of school than further away from  
22 being out of school might be a better test  
23 taker?

1 MR. MORGAN: Object to the form.

2 Q. Standard test taker?

3 MR. MORGAN: Object to the form.

4 A. That would seem plausible.

5 Q. Will you agree with me that the individuals who  
6 had been out of school for a lesser period of  
7 time than the older individuals had an advantage  
8 in taking the cutoff test for the battalion  
9 chief promotion?

10 MR. MORGAN: Object to the form.

11 A. No.

12 Q. You would not agree with that?

13 A. No.

14 Q. Would you agree with me that someone with a  
15 college education would have an advantage over  
16 someone without a college education in taking  
17 the cutoff score test for battalion chief  
18 promotion?

19 MR. MORGAN: Object to the form.

20 A. Not based on a cutoff score.

21 Q. Well, just the test, then.

22 A. I think that they would --

23 MR. MORGAN: Object to the form.

1 A. -- it's logical that somebody that has more  
2 formal education is going to do better on a  
3 test. And all of our employees have abundant  
4 opportunities to pursue education through the  
5 tuition reimbursement program, in particular,  
6 through courses that we send them to for  
7 training.

8 MR. MORGAN: Can we take another quick  
9 break?

10 MR. HORSLEY: Yeah.

11 (Brief recess.)

12 Q. (Continuing by Mr. Horsley) We've talked about  
13 the order of approving settlement agreement,  
14 Plaintiff's Exhibit 3, and you've read it. Will  
15 you agree with me that at least for a period of  
16 time, however long that was, the City did use  
17 this settlement agreement pursuant to its  
18 policies and procedures with regard to hiring  
19 minorities?

20 MR. MORGAN: Object to the form.

21 Q. Is that correct?

22 A. Yes. To any hiring.

23 Q. To any hiring.



1           So this document was something that the City  
2           had and looked at and used, correct?

3           MR. MORGAN: Object to the form.

4           A. For the promotions --

5           MR. MORGAN: Is there a special  
6           provision in there on hiring?

7           MR. HORSLEY: He said it.

8           A. In regard to the promotion processes for  
9           lieutenant and captain.

10          MR. MORGAN: Object to the form.

11          Q. Will you agree with me that the promotional  
12          process for battalion chief in May of '06  
13          consisted of the following: It consisted of a  
14          cutoff test and then the exercises that were  
15          implemented by CWH, and that was essentially it;  
16          is that correct?

17          MR. MORGAN: Why do we keep using May  
18          of '06? Didn't they take this  
19          written test in April?

20          Q. Didn't the promotion occur in May? If I've used  
21          May incorrectly, I stand corrected.

22          A. I don't remember the exact date.

23          Q. We're talking about the battalion chief

1 promotion in '06. Okay?

2 A. Okay.

3 Q. The process, you'll agree with me, did not  
4 include the consideration of seniority, correct?

5 A. Correct.

6 Q. It didn't include the consideration of time in  
7 grade, correct?

8 A. Correct.

9 Q. It didn't include the consideration of work  
10 experience, correct?

11 MR. MORGAN: Object to the form.

12 A. Not directly.

13 Q. It included essentially a cutoff test that was  
14 the first thing you had to do in order to be  
15 considered to be promoted to battalion chief,  
16 correct?

17 MR. MORGAN: Object to the form.

18 A. It utilized a job-related test with a cutoff  
19 score to advance further in the process.

20 Q. And you'll agree with me that that was the first  
21 step in the process. And if you did not pass  
22 that test, you were not allowed to progress in  
23 the process regardless of seniority, regardless

1 of work experience, regardless of time in grade,  
2 correct?

3 MR. MORGAN: Object to the form.

4 Q. Is that correct?

5 MR. MORGAN: Object to the form.

6 A. It is correct.

7 Q. That process -- Who developed that process to  
8 your knowledge?

9 A. The overall process?

10 Q. Uh-huh (positive response). The process y'all  
11 used for that specific promotion.

12 A. That process was developed by CWH in  
13 consultation with the City of Auburn, the  
14 employees that you've listed there.

15 Q. Do you know if that process itself, the entire  
16 process, for the promotion has ever been  
17 scientifically validated to not have a disparate  
18 or negative impact on Afro-Americans?

19 MR. MORGAN: Object to the form.

20 A. That particular process could not --

21 MR. MORGAN: Go ahead. I object to  
22 the form. You go ahead.

23 A. That particular process could not have been

1           scientifically validated because it had not been  
2           done. However, it used the EEOC uniform  
3           guidelines and other professional standards of  
4           test development such that there was assurance  
5           that it had content -- that it was content  
6           validated.

7       Q.    You're talking about the test itself.

8       A.    I'm talking about the test itself.

9       Q.    We're not exactly on the same page. I'm talking  
10           about the entire process for the promotion of  
11           battalion chief. The test was a component of  
12           that. You'll agree with me, correct?

13      A.    Correct.

14      Q.    And the test may have been scientifically  
15           validated by CWH, correct?

16      A.    Correct.

17      Q.    What I'm asking you is: Did the City of Auburn  
18           take the entire process with the test as a  
19           component of that process and have it  
20           scientifically validated not to have a disparate  
21           impact on Afro-Americans?

22                   MR. MORGAN: Object to the form.

23      A.    Let me try to answer that in this way. CWH

1 represents in their literature that their  
2 process results in valid job-related  
3 selections. That particular process could not  
4 have been after the fact -- Well, any analysis  
5 of it in terms of adverse impact would occur  
6 after the fact so it could not have been done  
7 before the fact. But following professional  
8 standards of test development and CWH's  
9 representation that the exercises are a neutral  
10 job-related method of making selections, I would  
11 say that it was scientifically validated.

12 Q. Just so we're clear, you understand what I'm  
13 saying when I say disparate impact; is that  
14 correct?

15 A. I do.

16 Q. But you've already testified that the City made  
17 the ultimate decision about having the test as  
18 the first factor of the process and the cutoff  
19 score, correct?

20 MR. MORGAN: Wait a minute. Here's  
21 the problem. You've asked him the  
22 question about the entire process,  
23 and then when he answered it, you

1 corrected him and asked him, no,  
2 you're looking at the entire  
3 process. He's now answered the  
4 question about the entire process,  
5 but now you're going back as if  
6 somehow the written test is  
7 supposed to be treated differently  
8 in terms of the validation.

9 MR. HORSLEY: Randall, just let me ask  
10 my question. I didn't tell you to  
11 ask you my guys questions in a  
12 certain way.

13 MR. MORGAN: I know that, but, I  
14 mean --

15 MR. HORSELY: Come on.

16 MR. MORGAN: Object to the form.

17 Q. My question is: Didn't you already testify that  
18 the City made the decision about the cutoff  
19 score on the test and that the test would be the  
20 first step in the process and that you could not  
21 go past the first step if you failed the test?  
22 Did the City make that decision?

23 MR. MORGAN: Object to the form.

1 A. Yes.

2 Q. So my question is: Has it been scientifically  
3 validated by the City that that process does not  
4 have a disparate impact on Afro-Americans, that  
5 the test be given first, if you don't meet the  
6 cutoff, you don't progress and then nothing else  
7 is considered?

8 MR. MORGAN: Object to the form.

9 A. We were relying on our consultant to advise us  
10 in that regard.

11 Q. And who was that?

12 A. CWH.

13 Q. Is it your testimony that CWH informed you that  
14 if the test were done first without a cutoff  
15 score, you could not progress past the test if  
16 you failed, that that had been scientifically  
17 validated not to have a disparate impact on  
18 Afro-Americans?

19 MR. MORGAN: Object to the form.

20 Q. Your testimony is that's what CWH told the City  
21 of Auburn?

22 MR. MORGAN: Object to the form.

23 A. I'm sorry. Repeat the question.

1 Q. I think you just testified that your consultant  
2 CWH advised the City of Auburn that if you  
3 conducted the test as the first factor in the  
4 process with a cutoff score and that you could  
5 not progress past the test if you failed it had  
6 been scientifically validated to not have a  
7 disparate impact on black applicants?

8 MR. MORGAN: Object to the form.

9 Q. Did they tell you that?

10 MR. MORGAN: Object to the form.

11 A. They told us that the process that they use  
12 using subject matter experts to develop the  
13 written test was a neutral job-related,  
14 content-validated approach recognized in  
15 professional standards as the appropriate way to  
16 develop a test which is neutral.

17 Q. But they didn't tell you that using the test as  
18 the first factor with a cutoff score was neutral  
19 or did not have a disparate impact on  
20 Afro-Americans, did they?

21 MR. MORGAN: Object to the form.

22 A. They did not tell us that the test would have  
23 adverse impact.



1 Q. Would not -- What I'm asking you is: Did they  
2 tell you the test would not have -- the whole  
3 process of using the test first with a cutoff  
4 score would not have an adverse or a disparate  
5 impact on Afro-Americans? Did they tell you  
6 that?

7 MR. MORGAN: Object to the form.

8 A. They did not tell us that it would have adverse  
9 impact.

10 Q. You're not hearing my question. Did they tell  
11 you it would not have an adverse impact?

12 MR. MORGAN: Object to the form.

13 A. I guess you're using a double negative in here.

14 Q. Well, let me repeat it just so we're clear.

15 Did CWH advise the City that if you used the  
16 test as the first factor in the promotional  
17 process with a cutoff score beyond which you  
18 could not go if you failed, that that process  
19 would not have a disparate impact on  
20 Afro-American applicants?

21 MR. MORGAN: Object to the form.

22 A. They did not tell us that using the test as a  
23 cutoff would not have adverse impact because it

1           was designed as a neutral test.

2       Q.    That's all my question was, and you just  
3           answered it. They did not tell you that,  
4           correct?

5                       MR. MORGAN: Object to the form.

6       Q.    You answered yes.

7       A.    Why would they?

8       Q.    And you'll agree with me that the promotional  
9           process that the City of Auburn used with the  
10          test as a component of that process caused the  
11          only black applicants not to receive the  
12          promotion, correct?

13                     MR. MORGAN: Object to the form.

14      A.    They and four others. Four whites did not  
15          advance beyond that level.

16      Q.    And how many white applicants were there for  
17          that battalion chief promotion to your  
18          knowledge?

19      A.    Nine.

20      Q.    Nine?

21      A.    No. I'm sorry. There were nine that sat for  
22          it. I think there were eleven that applied.

23      Q.    Is it your testimony that four white applicants

1 did not pass the test?

2 A. That is my testimony.

3 Q. And seven white applicants passed the test; is  
4 that correct?

5 A. Five.

6 Q. Five passed the test?

7 A. (Witness nods head positively.)

8 Q. So there were nine white applicants total. I  
9 thought you said eleven.

10 A. There were eleven white applicants. There were  
11 two white applicants that opted out before the  
12 test.

13 Q. Okay. So nine whites took the test. Four of  
14 them failed it, correct?

15 A. Correct.

16 Q. And you'll agree with me that three  
17 Afro-Americans took the test and failed it,  
18 correct?

19 A. Correct.

20 Q. The only three applicants for battalion chief --  
21 The only three Afro-American battalion chief  
22 applicants did not make it through the process  
23 that the City developed for the battalion chief

1 promotion, correct?

2 MR. MORGAN: Object to the form. The  
3 City didn't develop it. Object to  
4 the form. I'm sorry.

5 A. They did not make it through the test.

6 Q. They didn't make it through the process,  
7 correct?

8 A. Correct.

9 Q. Are you aware that the only black firemen hired  
10 by the City of Auburn Fire Department since 1991  
11 are Chris Turner, Gerald Stephens, Kevin Harper,  
12 and Rod Torbert?

13 MR. MORGAN: Object to the form.

14 A. I'm aware that two of them were: Chris and  
15 Gerald.

16 Q. Do you have any information at your disposal  
17 that would indicate more Afro-Americans than  
18 those I just named have been hired by the fire  
19 department?

20 A. Probably.

21 Q. You do?

22 A. Yeah.

23 Q. Can you tell me who they are or are you saying

1           you could get that information?

2       A.    I'm sure we've got that information.

3       Q.    And you believe that more have been hired by the  
4           City of Auburn Fire Department?

5       A.    Including in the student firefighter program,  
6           yes.

7       Q.    But not including the student firefighter  
8           program.

9       A.    I don't know about those last two.

10      Q.    Do you know how many white firemen have been  
11           hired by the City of Auburn since 1991?

12      A.    No.

13      Q.    Do you have an estimate?

14      A.    Regular or student?

15      Q.    Regular.

16      A.    This is a very rough estimate.  Probably 20.

17      Q.    Could the City provide records to us of that  
18           number?

19      A.    We can try.

20                   MR. MORGAN:  Well, let me -- you can  
21                   submit a request and we can  
22                   respond to it.

23      Q.    You said a rough estimate would be 20, correct?

1 A. A very rough estimate.

2 Q. Could be more? Could be less?

3 A. Yes.

4 Q. You're referring to the student firefighters,  
5 and I guess your indication is there have been a  
6 number of Afro-Americans hired into the student  
7 firefighter program, correct?

8 A. Correct.

9 Q. Are you aware of one Afro-American student  
10 firefighter that's been hired by the City of  
11 Auburn as a full-time firefighter since 1991?

12 MR. MORGAN: Object to the form.

13 A. I think one.

14 Q. Who?

15 A. If I'm not mistaken, Gerald was a student  
16 firefighter.

17 Q. Gerald Stephens?

18 A. Yes.

19 Q. Other than Mr. Stephens, who has been hired to  
20 your knowledge out of the student firefighter  
21 program?

22 A. I couldn't say.

23 Q. What does the student firefighter program do in

1           order to attract minority applicants in the City  
2           of Auburn?

3           A.    Thank you for asking that question.

4           Q.    Uh-huh (positive response).

5           A.    The City of Auburn is very aggressive in its  
6           recruitment process. We cast a very wide net  
7           such that anybody that wants to know of a job  
8           with the City of Auburn can easily find out  
9           about that. Specifically in terms of recruiting  
10          minorities to the student firefighter program,  
11          we recruit through the State Employment Office,  
12          through the City's Web site, through four or  
13          five traditionally black colleges, through a  
14          dozen or so black churches, through -- At one  
15          time we sent literature to every high school in  
16          the state informing them about the student  
17          program. More recently we've sent literature --  
18          contacted every high school within a 50 to 60  
19          mile range. We have participated in career days  
20          at those high schools. Much of this has been an  
21          effort to reach out to minorities and let them  
22          know of our programs so that we can get them  
23          into the student program. And ultimately

1 because our student program does act as a feeder  
2 into our career program because of the education  
3 and the experience that the student firefighters  
4 have, they become -- they are very competitive  
5 with outside applicants for career firefighter  
6 positions and so we try to get them into the  
7 student program so they'll be successful when  
8 they apply for the career positions. So we cast  
9 a very wide net, and we've been very aggressive  
10 with that.

11 Q. And, again, other than Gerald Stephens, you're  
12 not aware of any student fire -- minority  
13 student firefighter hired full-time by the City  
14 of Auburn since 1990, correct?

15 A. That's correct.

16 Q. Do you know who drafted Plaintiff's Exhibits 7  
17 and 8, who authored those exhibits?

18 A. Yes.

19 Q. Who?

20 A. Me. It was also reviewed by -- After I drafted  
21 them, it was reviewed by the city attorney, and  
22 I suspect that public safety employees were also  
23 involved in that review. But I drafted it.



1 Q. Do you agree with me that if the battalion chief  
2 test with a cutoff score had not been used --  
3 specifically with a cutoff score had not been  
4 used as a part of the battalion chief promotion  
5 that Gerald Stephens and Eddie Ogletree would  
6 have had a better opportunity to receive the  
7 battalion chief promotion?

8 MR. MORGAN: Object to the form.

9 A. I don't know that.

10 Q. Are you aware or have you been told by any chief  
11 or any other employee with the City of Auburn  
12 that there were other factors in that  
13 promotional process that they thought would have  
14 hindered Mr. Ogletree or Mr. Stephens pursuant  
15 to that promotion?

16 MR. MORGAN: Object to the form.

17 A. No.

18 Q. And just so I'm clear -- and I'm going to take a  
19 little break, and I may be through -- your  
20 position and the City of Auburn's position back  
21 in February of '06 and until today is that the  
22 1991 order in the Hammock case is no longer in  
23 effect and was not in effect back in 2006,

1 correct?

2 MR. MORGAN: Object to the form. Go  
3 ahead.

4 A. I would say that's true in regard to utilization  
5 of the selection procedure for lieutenant.

6 Q. What about captain?

7 MR. MORGAN: Object to the form.

8 Q. Let me ask you this. Isn't it true that the  
9 title change from captain to shift commander --  
10 Is that right?

11 A. Yes.

12 Q. -- relieved the City of any requirements  
13 pursuant to this order with regard to the  
14 captain promotion?

15 MR. MORGAN: Object to the form.

16 A. I don't think the City looked at it that way.

17 Q. Well --

18 A. I think the City saw that as just a title  
19 change, and they were still abiding by this  
20 agreement.

21 Q. Still abiding by this agreement when? At what  
22 time?

23 A. When shift commander became a job title used in

1 the fire division.

2 Q. And that was in the early to mid-'90s, correct?

3 A. Somewhere in there.

4 MR. HORSLEY: Let's take a little  
5 break.

6 (Brief recess.)

7 MR. HORSLEY: On the record we need to  
8 state we are missing Exhibit 6.  
9 There was no document marked as  
10 Exhibit 6.

11 Q. I'm going to get you to identify several  
12 things.

13 (Brief off-the-record discussion.)

14 MR. HORSLEY: I will mark what I'm  
15 about to offer as Exhibit 6.

16 (Plaintiff's Exhibit 6 marked for  
17 identification.)

18 Q. This is a document that was produced to us in  
19 the initial disclosures in this case. Can you  
20 simply identify that for me?

21 (Brief off-the-record discussion.)

22 Q. Can you identify it for me?

23 A. This is entitled City of Auburn Pay Table

1 Beginning October 1, 2005.

2 Q. And --

3 A. And at the bottom it says: Pay table FY 2006.

4 Q. Is that -- What does that mean?

5 A. That means that that was the pay table for the  
6 classified employees of the City of Auburn in  
7 effect for fiscal year 2006, which began October  
8 1, 2005.

9 (Plaintiff's Exhibits 10 & 11 marked  
10 for identification.)

11 Q. Let me show you what I've marked as Plaintiff's  
12 Exhibits 10 and 11, which are Notice of Right to  
13 Sue letters and determinations issued by the  
14 U.S. Equal Employment Opportunity Commission  
15 which I believe were both sent to the City of  
16 Auburn. And I'll just ask you if you've ever  
17 seen both of those documents.

18 MR. MORGAN: I see what they are, but  
19 are you representing that the  
20 determination went with the right  
21 to sue letter?

22 MR. HORSLEY: I believe it did.

23 MR. MORGAN: I'm going to object to

1 the form.

2 MR. HORSLEY: This is how I have the  
3 documents in my file. I may be  
4 wrong.

5 MR. MORGAN: All right. I'm going to  
6 object to the form.

7 MR. HORSLEY: That's fine.

8 Q. Have you seen all these documents previously?

9 A. I think so.

10 Q. My question is: Before the determinations were  
11 sent to the City of Auburn, did you participate  
12 in the City of Auburn's response to the EEOC  
13 claims made by Stephens and Ogletree?

14 A. I did.

15 Q. And did you do that with Mr. Umbach?

16 A. I did.

17 Q. Did anybody else with the City to your knowledge  
18 participate in the City's response to those  
19 charges?

20 A. Yeah. I believe others at this table  
21 participated in that and others that are not at  
22 this table, including CWH.

23 Q. Who actually drafted the responses?

1 A. I think it was -- it came out of our city  
2 attorney's office. I don't know who drafted it.

3 Q. Around Umbach?

4 A. It came from his office.

5 (Plaintiff's Exhibit 12 marked for  
6 identification.)

7 Q. What I have marked as 12 are your response to  
8 our interrogatories.

9 MR. HORSELY: And, Randall, you may  
10 have sent them to me and I haven't  
11 seen them in my mass of  
12 documents. But I don't think I  
13 have a signed copy yet.

14 MR. MORGAN: Okay. I'll check on  
15 that.

16 MR. HORSLEY: If you've already sent  
17 them, just tell me and I'll try to  
18 find them. But I assume nothing  
19 has changed.

20 Q. Can you identify Plaintiff's Exhibit 12?

21 (Brief off-the-record discussion.)

22 A. You asked me to identify this document: Stephen  
23 A. Reeves' Responses to Plaintiff's First Set of

1 Interrogatories.

2 Q. Is that an accurate copy of your responses to my  
3 interrogatories as best you can tell?

4 A. As best I can tell.

5 Q. Have you ever read those before today?

6 A. I think I did.

7 Q. Do you recall signing them and getting your  
8 signature notarized? It's not on that document,  
9 but do you know if you've done that yet?

10 A. I don't recall notary -- What I do recall is  
11 that the City developed responses. That's what  
12 stands out in my mind more so than this  
13 document.

14 Q. But those are your individual responses. At  
15 some point you're going to have to sign  
16 responses, and what I'm trying to get at is:  
17 Are those going to be the responses that you  
18 sign or is there going to be something that's  
19 changed or different before you sign them or do  
20 you know?

21 A. I don't know, but I have no reason to believe  
22 that I would make any changes.

23 Q. As far as you know, these are your responses to

1 the interrogatories that -- these are going to  
2 be your sworn responses to my interrogatories?

3 A. As far as I know.

4 Q. Are you aware that Lieutenant Stephens requested  
5 of Langley to have his lieutenant's title  
6 changed to that of captain at some point?

7 A. I'm not aware of that.

8 Q. So you're not aware that that request was  
9 denied?

10 A. I've never heard that.

11 MR. HORSLEY: That's all I have.

12 Thank you.

13 MR. HANCOCK: I've got just a couple  
14 of questions. I'll go ahead and  
15 knock them out.

16 **EXAMINATION**

17 **BY MR. HANCOCK:**

18 Q. Mr. Reeves, the City of Auburn does not contend  
19 that CWH's batching test had a disparate impact  
20 on test takers, does it?

21 A. Not being a statistician, I don't think you can  
22 establish disparate impact with such a small  
23 population.



1 Q. I'm not asking about the statistical  
2 significance of the pool of test takers. I'm  
3 asking whether Auburn takes the position that  
4 the test itself had a disparate impact on those  
5 who took the test.

6 A. We take the position that it didn't.

7 Q. Do you recall that CWH recommended that no  
8 cutoff score be applied, that the City not use a  
9 cutoff score of any number?

10 A. I don't recall -- There was a lot of discussion  
11 about cutoff score. In fact, in the literature  
12 from CWH, it says some tests use a cutoff  
13 score. We discussed that quite extensively with  
14 CWH. We partnered with them through this  
15 process, and there was a lot of back-and-forth  
16 discussion. And ultimately the decision was we  
17 would use a cutoff score as part of the  
18 process -- the overall process.

19 Q. I understand that was the City's ultimate  
20 decision. My question is: Do you recall that  
21 CWH recommended that a cutoff score not be  
22 used? Let me ask it maybe a different way.

23 Do you recall that CWH recommended that all

1 applicants be allowed to proceed through the  
2 assessment center notwithstanding their test  
3 score?

4 A. At one time they actually recommended that only  
5 the top twelve finishers go through.

6 Q. That ultimately was not the City's decision,  
7 though, right?

8 A. No. Ultimately the City's decision was that  
9 anybody that passed the 70 percent threshold  
10 would move forward in the process.

11 Q. And it was the City's decision not to allow  
12 those who didn't score 70 or higher on the test  
13 to proceed to the assessment center; is that  
14 correct?

15 A. As I've said before, that was the decision made  
16 collectively with CWH as our consultant.

17 Q. CWH was the consultant, but it had no decisional  
18 authority in the decision, did it?

19 MR. MORGAN: Object to the form.

20 A. Ultimately, if you want to say who had the final  
21 authority on a cutoff score, it would have been  
22 the City of Auburn.

23 Q. CWH couldn't make any decision at all. All it

1           could do is offer advice; is that correct?

2                   MR. MORGAN: Object to the form.

3       A.     Correct.

4       Q.     If CWH were to take the position that it  
5           recommended that all applicants be allowed to  
6           proceed to the assessment center regardless of  
7           score and that the test score be but one  
8           component of the ultimate decision, would you  
9           dispute that contention?

10                   MR. MORGAN: Object to the form.

11     A.     Yes.

12     Q.     Why?

13     A.     Part of the discussion included CWH, Michael  
14           Blair, expressing the opinion that somebody that  
15           did poorly on the test would find the assessment  
16           center process demoralizing or humiliating.

17     Q.     I'm not sure that answers my question, though.

18     A.     Would you ask the question again, please?

19                   MR. HANCOCK: Would you read it back  
20                   to him, please?

21                   (The immediately preceding question  
22                   was read back by the court  
23                   reporter.)

1 A. I can only say that there was a lot of  
2 back-and-forth discussion, and I don't know if  
3 they actually said that we should not have a  
4 cutoff score and that everyone should  
5 participate.

6 Q. So Auburn's position is that there was  
7 discussion back and forth, but it couldn't  
8 dispute the assertion by CWH that CWH  
9 recommended that all applicants be allowed to  
10 proceed through the assessment center  
11 notwithstanding their test score?

12 MR. MORGAN: Object to the form of the  
13 question.

14 A. My position is that we partnered with CWH to  
15 guide us through a process, and we listened very  
16 carefully to their recommendations. There was a  
17 lot of discussion about whether or not to use a  
18 cutoff score. And ultimately, in conjunction  
19 with CWH, a cutoff score was determined.  
20 Whether or not CWH advised us flat-out not to  
21 use a cutoff score, I don't recall that.

22 Q. You don't recall one way or the other?

23 A. I don't recall that they flat-out said don't use

1 a cutoff score.

2 Q. Do you remember them urging the City not to use  
3 a cutoff score?

4 MR. MORGAN: Object to the form.

5 Q. Pardon me. Do you recall that CWH recommended  
6 that Auburn not use a cutoff score?

7 A. I don't recall that. Again, there was a lot of  
8 conversation back and forth, and we talked about  
9 letting the score stand as it was and being a  
10 part of the final score as it was -- ultimately  
11 the test was a part of the final score at the  
12 end of the process or to -- or not to have a  
13 cutoff score. I just -- There was a lot of  
14 discussion about that, and ultimately we decided  
15 that in the tradition of the fire service and in  
16 being consistent with other testing processes  
17 that the City had done that the cutoff score was  
18 an appropriate thing for us to use on the  
19 written test.

20 Q. It was Lee Lamar who first suggested a 70 cutoff  
21 score, wasn't it?

22 A. I can't say he was the first one to say that.  
23 Again, that's something in the CWH literature.

1 Q. Well, CWH never recommended that the City use a  
2 cutoff score of 70, did it?

3 A. Actually, in the assessment -- in the exercises  
4 portion of the whole process, they did.

5 Q. I'm talking about the test.

6 A. I don't know that they said one way or the  
7 other. I mean, I couldn't say that they said 70  
8 percent.

9 Q. Is it Auburn's position that CWH ever recommend  
10 that a cutoff score be used with regard to the  
11 test -- the written test?

12 MR. MORGAN: Object to the form.

13 A. They told us that some clients use a cutoff  
14 score and some clients don't. I'm sorry I'm not  
15 answering the question.

16 Q. Right. Because in point of fact, CWH never  
17 recommended that the City of Auburn use a cutoff  
18 score.

19 MR. MORGAN: Object to the form.

20 Asked and answered.

21 A. I don't think they -- Through those discussions  
22 they didn't say it was wrong to do so.

23 Q. But they never said it was right and appropriate

1 to. They said some clients use a cutoff and  
2 others don't?

3 MR. MORGAN: Object to the form.

4 A. And what would we take from that?

5 Q. Well, ultimately it was the City of Auburn and  
6 not CWH that decided to use a cutoff score; is  
7 that correct?

8 A. Yes.

9 Q. And it was the City of Auburn and not CWH that  
10 decided that the cutoff score would be 70; is  
11 that correct?

12 MR. MORGAN: Object to the form.

13 A. Yes.

14 Q. And it's the City's position that the  
15 utilization of the written test with a cutoff  
16 score of 70 did not have an adverse impact on  
17 applicants or test takers; is that correct?

18 A. Correct.

19 MR. HANCOCK: I don't have anything  
20 else.

21 MR. HORSLEY: One other question.

22 **EXAMINATION**

23 **BY MR. HORSLEY:**

1 Q. The battalion chief promotion in 2006 was the  
2 first time the City had ever implemented a test  
3 with a cutoff score for a promotion; is that  
4 correct?

5 MR. MORGAN: Object to the form.

6 A. Not correct.

7 Q. When was it done before?

8 A. It was used for team leader in 2005.

9 Q. Team leader in 2005.

10 And who was the company that implemented or  
11 did the test?

12 A. We utilized a test that was developed by the  
13 International Public Management Association.

14 Q. And that was for promotions to team leader?

15 A. To company officer, parenthesis, lieutenant, or  
16 maybe it's the other way around. It's the  
17 company officer level position.

18 Q. And that was in 2005?

19 A. That's correct.

20 Q. And it's your testimony that the City used a  
21 test with a cutoff score as their first factor  
22 in that promotional process; if you didn't meet  
23 the cutoff score, you did not go forward?



1 A. That's my recollection.

2 Q. And who to your knowledge applied for that  
3 promotion?

4 A. I don't remember. I think I want to say David  
5 Hines was the one that was promoted from that  
6 process, but I don't remember who all applied  
7 for it.

8 Q. Do you recall what African-Americans, if any,  
9 applied for that promotion?

10 A. I think Chris Turner applied for that.

11 Q. Did he take the test?

12 A. I think he did.

13 Q. Did he pass it?

14 A. He did not.

15 Q. What was the cutoff score on that test?

16 A. I recall that it was 70 percent.

17 Q. Who decided to have a test with a cutoff score  
18 of 70 on that occasion?

19 A. I don't know. Maybe I should say I don't  
20 recall.

21 Q. Was the battalion chief promotion the first time  
22 that the City had ever implemented a test with a  
23 cutoff score for any position -- for promotion

1 to any position above team leader?

2 MR. MORGAN: Object to the form.

3 A. Are you asking if we had ever used a test with a  
4 cutoff score for the battalion level job?

5 Q. Yes.

6 A. No.

7 Q. Okay.

8 A. Not to my knowledge.

9 Q. Is it Chief Lamar now?

10 A. Yes.

11 Q. Was Chief Lamar required to take a test with a  
12 cutoff score in order to be promoted to chief?

13 A. No.

14 Q. Was that a position that people could apply for?

15 A. The city manager made an appointment to the  
16 unclassified service. The fire chief, the  
17 police chief, the department heads are in the  
18 unclassified service. They are not covered by  
19 the personnel policies of the City of Auburn.  
20 They serve strictly at the will of the city  
21 manager. He was appointed to that position.

22 Q. What about -- What was his job before he was  
23 deputy chief?

1 A. Before he was deputy chief, he was team leader.

2 Q. He was a team leader?

3 A. I'm sorry. He was the training officer.

4 Q. Training officer. And he was promoted from  
5 training officer to deputy chief; is that  
6 correct?

7 A. Correct.

8 Q. Did that promotion require an assessment center?

9 A. No, not that I recall.

10 Q. Was he required to take any type of test?

11 A. I think there were interviews.

12 Q. Do you recall who else interviewed for that  
13 position?

14 A. I don't.

15 Q. Will you agree with me that Chief Lamar was  
16 promoted to chief based on experience and  
17 seniority?

18 MR. MORGAN: Object to the form.

19 A. No.

20 Q. You would not?

21 A. No.

22 Q. What were the circumstances of that promotion?

23 MR. MORGAN: Object to the form.

1 A. It wasn't my decision.

2 Q. Do you know why he was promoted to that  
3 position?

4 A. I assume because he was doing a good job as  
5 acting chief.

6 Q. His experience and his job history with the City  
7 of Auburn allowed for him to get that  
8 promotion. Would you agree with that?

9 MR. MORGAN: Object to the form.

10 He's asked and answered.

11 A. The skill set -- From an HR perspective, the  
12 skill set that Lee Lamar brought to the table  
13 combined with education and his experience as a  
14 fire officer enabled him to succeed as the  
15 acting chief. And I would presume -- I'm not  
16 speaking for my city manager, but I'm assuming  
17 my city manager took that into consideration  
18 when he made the appointment.

19 MR. HORSLEY: That's all. Thank  
20 you.

21 (Deposition concluded at  
22 approximately 12:30 p.m.)

23 \* \* \* \* \*

1 FURTHER DEPONENT SAITH NOT

2 \* \* \* \* \*

3 REPORTER'S CERTIFICATE

4 STATE OF ALABAMA:

5 MONTGOMERY COUNTY:

6 I, Pamela A. Wilbanks, CCR, Registered  
7 Professional Reporter, and Commissioner for the State  
8 of Alabama at Large, do hereby certify that I reported  
9 the deposition of:

10 STEVEN A. REEVES

11 who was first duly sworn by me to speak the truth, the  
12 whole truth and nothing but the truth, in the matter  
13 of:

14 EDDIE OGLETREE, an individual,

15 GERALD STEPHENS, an

16 individual,

17 Plaintiffs,

18 Vs.

19 CITY OF AUBURN, a municipality

20 in the State of Alabama, LARRY

21 LANGLEY, and individual, LEE LAMAR,

22 an individual, BILL HAM, JR., an

23 individual, STEVEN A. REEVES, an

1 individual, BILL JAMES, an  
2 individual, CHARLES M. DUGGAN, an  
3 individual, and CORTEZ LAWRENCE,  
4 an individual,  
5 Defendants.

6 In The U.S. District Court  
7 For the Middle District of Alabama  
8 Eastern Division

9 3:07-CV-867-WKW

10 on Wednesday, July 30, 2008.

11 The foregoing 128 computer printed pages  
12 contain a true and correct transcript of the  
13 examination of said witness by counsel for the parties  
14 set out herein. The reading and signing of same is  
15 hereby not waived.

16 I further certify that I am neither of kin nor  
17 of counsel to the parties to said cause nor in any  
18 manner interested in the results thereof.

19 This 5th day of August 2008.  
20  
21  
22  
23

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Pamela A. Wilbanks (74 M.C.)  
Pamela A. Wilbanks, ACCR #334  
Expiration Date: 9-30-2008  
Registered Professional Reporter  
and Commissioner for the State  
of Alabama at Large

**DEPOSITION TESTIMONY OF  
LEE LAMAR**



ORIGINAL<sup>1</sup>

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF ALABAMA

3 EASTERN DIVISION

4 EDDIE OGLETREE, an individual,  
5 GERALD STEPHENS, an  
6 individual,

7 Plaintiffs,

8 Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

9 CITY OF AUBURN, a municipality  
10 in the State of Alabama, LARRY  
11 LANGLEY, an individual, LEE LAMAR,  
12 an individual, BILL HAM, JR., an  
13 individual, STEVEN A. REEVES, an  
14 individual, BILL JAMES, an  
15 individual, CHARLES M. DUGGAN, an  
16 individual, and CORTEZ LAWRENCE,  
17 an individual,

18 Defendants.

19 \* \* \* \* \*

20 **DEPOSITION OF LEE Y. LAMAR, JR.,** taken pursuant  
21 to stipulation and agreement before Pamela A. Wilbanks,  
22 Certified Court Reporter, ACCR# 391, Registered  
23 Professional Reporter and Commissioner for the State of  
Alabama at Large, in the Conference Room of Auburn City  
Hall, 144 Tichenor Avenue, Auburn, Alabama, on  
Wednesday, July 30, 2008, commencing at approximately  
2:50 p.m.

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**APPEARANCES**

**FOR THE PLAINTIFF:**

Mr. Richard F. Horsley  
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Birmingham, AL 35209

**FOR THE DEFENDANT:**

Mr. Randall Morgan  
HILL, HILL, CARTER, FRANCO, COLE & BLACK  
Attorneys at Law  
425 South Perry Street  
Montgomery, Alabama

**ALSO PRESENT:**

Mr. D'Arcy Wernette  
Mr. Steven Reeves  
Mr. Larry Langley  
Mr. Bill James  
Mr. Eddie Ogletree  
Mr. Gerald Stephens

\* \* \* \* \*

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\* \* \* \* \*

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20	4/28/06 letter to Gerald Stephens from Lee Lamar in response to Mr. Clanton's grievance	33
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**STIPULATION**

It is hereby stipulated and agreed by and between counsel representing the parties that the deposition of **LEE Y. LAMAR, JR.** is taken pursuant to the Alabama Rules of Civil Procedure and that said deposition may be taken before Pamela A. Wilbanks, Registered Professional Reporter and Commissioner for the State of Alabama at Large, without the formality of a commission, that objections to questions other than objections as to the form of the question need not be made at this time but may be reserved for a ruling at such time as the said deposition may be offered in

1 evidence or used for any other purpose by either party  
2 provided for by the Statute.

3           It is further stipulated and agreed by and  
4 between counsel representing the parties in this case  
5 that the filing of said deposition is hereby waived and  
6 may be introduced at the trial of this case or used in  
7 any other manner by either party hereto provided for by  
8 the Statute regardless of the waiving of the filing of  
9 the same.

10           It is further stipulated and agreed by and  
11 between the parties hereto and the witness that the  
12 signature of the witness to this deposition is hereby  
13 not waived.

14                   \* \* \* \* \*

15                   **LEE Y. LAMAR, JR.**

16           The witness, after having first been duly  
17 sworn to speak the truth, the whole truth and nothing  
18 but the truth testified as follows:

19                   **EXAMINATION**

20 **BY MR. HORSLEY:**

21       Q.     Please tell us your full name.

22       A.     Lee Young Lamar, Jr.

23       Q.     We've met before. I'm going to ask you

1 questions just like everybody else. If you want  
2 me to rephrase it or repeat it, tell me.

3 Otherwise I'll assume you understood and gave  
4 the answer you intended to give. Okay?

5 A. Yes, sir.

6 Q. Where do you currently reside?

7 A. 566 Lee Road 93, Waverly, Alabama 36879.

8 Q. And where are you currently employed?

9 A. City of Auburn.

10 Q. And you're the City of Auburn fire chief; is  
11 that correct?

12 A. Deputy public safety director fire operations or  
13 fire chief.

14 Q. And that means fire chief?

15 A. Yes, sir.

16 Q. If I call you fire chief, we'll assume -- that  
17 means all those titles you just gave us.

18 And how long have you been the fire chief?

19 A. I was named acting December 1, 2007 and then was  
20 made permanent July 1, 2008.

21 Q. And what were you on December 1 of '07?

22 A. Acting.

23 Q. And then you became permanent?

1 A. Yes, sir.

2 Q. What process did you go through to go from  
3 acting fire chief to permanent fire chief?

4 A. No specific process. Mr. James and I discussed  
5 it, and then I was -- had an appointment with  
6 Charles Duggan, the city manager. We discussed  
7 it, and then he offered the position to me.

8 Q. Was that a promotion?

9 A. Yes, sir. From deputy chief.

10 Q. And you didn't have to take a test, correct?

11 A. No, sir. Not for that.

12 Q. Other than your meeting with Mr. Duggan, did you  
13 have to give any interviews?

14 A. I had to prepare some papers. They requested  
15 some papers be written.

16 Q. Did you have to go to an assessment center?

17 A. No, sir.

18 Q. What job did you -- That's when you went from  
19 acting to permanent?

20 A. Yes, sir.

21 Q. Before you were acting fire chief, what was your  
22 position?

23 A. Deputy fire chief.

1 Q. And what year or when did you go from being  
2 deputy fire chief to acting fire chief?

3 A. 2007.

4 Q. And that's when Chief Langley retired?

5 A. Yes, sir.

6 Q. Tell us what process you had to go through in  
7 order to become acting fire chief.

8 A. I don't recall the specific process. Before  
9 Chief Langley retired, Mr. James met with me and  
10 explained or offered me the opportunity to take  
11 over as acting.

12 Q. Once again, you didn't have to undergo any test,  
13 correct?

14 A. No, sir.

15 Q. No formal interviews, correct?

16 A. Not that I recall, sir.

17 Q. And you didn't have to go to an assessment  
18 center, correct?

19 A. No, sir.

20 Q. And before you were deputy chief, what was your  
21 position?

22 A. Before deputy chief?

23 Q. Yeah.

1 A. I --

2 Q. Isn't that what we were just talking about to  
3 get to deputy chief?

4 A. Well, acting -- from chief to acting -- working  
5 backwards, from chief to acting. Before acting  
6 I was deputy fire chief. Before that I was the  
7 training officer for the division.

8 Q. I thought I had asked you that, but I guess I  
9 was a step ahead of myself.

10 What process did you go through to become  
11 the deputy chief?

12 A. Interview process.

13 Q. Who did you interview with?

14 A. I believe Wendy Hassett, Bill James, Larry  
15 Langley, and Steve Reeves were on the interview  
16 board that all of the candidates sat before.

17 Q. Is deputy chief the same thing as training  
18 chief?

19 A. No, sir. They are different jobs.

20 Q. Did you hold the job of training chief?

21 A. I was training officer, yes, sir.

22 Q. That was before deputy chief?

23 A. Yes, sir.



1 Q. So you interviewed with those people you just  
2 mentioned to become deputy chief. What else did  
3 you have to do?

4 A. It was a competitive interview. That was all we  
5 did. We submitted resumes and applications, and  
6 then they interviewed us and made a selection  
7 based on our interview scores.

8 Q. Did you have to undergo an assessment center?

9 A. No, sir.

10 Q. Did you have to take a written test?

11 A. No, sir.

12 Q. Who else applied for deputy chief when you did?

13 A. Within the department -- There were both people  
14 from inside and outside the department. From  
15 within the department, I believe Rod Hartsfield,  
16 I believe Gerald Stephens, Joey Darby. I'm not  
17 sure who else within the department. And then  
18 there were several people from outside that I  
19 would not -- I didn't know. We weren't privy to  
20 those names.

21 Q. How does that work? Did they come from some  
22 other fire department?

23 A. Yes, sir.

1 Q. It wasn't just people -- It wasn't just  
2 civilians. Okay.

3 Do you have any information today about  
4 Gerald Stephens' interviews for that job?

5 A. No, sir. That would be privileged.

6 Q. Was the job of deputy chief actually a posted  
7 job position?

8 A. Yes, sir.

9 Q. Who ultimately made the decision to promote you  
10 to deputy chief?

11 A. If -- I don't know for sure. I would imagine if  
12 it's like many things, a recommendation by the  
13 board was sent to the city manager, and he would  
14 have made the appointment.

15 Q. And was anybody else promoted to deputy chief at  
16 the same time?

17 A. No, sir.

18 Q. There's only one deputy chief --

19 A. There's only --

20 Q. -- in that department?

21 A. -- one vacancy. Sorry.

22 Q. And before deputy chief, what was your position?

23 A. Training officer for the division.

1 Q. Training officer?

2 A. Yes.

3 Q. And that's different than training chief?

4 A. The actual job title is training officer on the  
5 job description.

6 Q. So is there such a thing as training chief?

7 A. People refer to it as that because it's at the  
8 same level as the battalion.

9 Q. So when I said training chief a minute ago, that  
10 would be the same thing as training officer; is  
11 that correct?

12 A. Yes, sir.

13 Q. And how long were you a training officer?

14 A. I believe it was -- March of 2001 would have  
15 been when I moved over from the line to that  
16 position.

17 Q. What do you mean the line?

18 A. In fire service you have line and staff. Line  
19 personnel are those who work shift and respond  
20 to calls directly on a daily basis. Staff are  
21 those who work in administration. And I moved  
22 off the line to take that position.

23 Q. What was your job title before you became

1 training chief?

2 A. Team leader.

3 Q. And what process did you go through to be  
4 promoted from team leader to training officer?

5 A. I believe it was posted. I stated that I was  
6 interested in it, and I don't think anybody else  
7 did because there was no pay incentive. And it  
8 was just an opportunity to move over and try to  
9 work with training. I think I was the only  
10 person who applied at that time.

11 Q. Is it your testimony under oath that that job  
12 was posted for people within the department to  
13 apply for, correct?

14 A. To the best of my recollection.

15 Q. And did you have to take a test to get that  
16 promotion?

17 A. No.

18 MR. MORGAN: Object to the form as a  
19 promotion.

20 Q. Did you have to undergo an assessment for that  
21 promotion?

22 MR. MORGAN: Object to the form of  
23 the question.

1 A. No.

2 Q. Did you have to interview for that?

3 MR. MORGAN: Object to the form.

4 A. No.

5 Q. All you did was put your name and you were  
6 selected -- put in your name and you were  
7 selected, correct?

8 A. Yes, sir. It was not a promotion.

9 Q. Was there a certain reason why you wanted it, if  
10 it was not a promotion, but nobody else wanted  
11 it?

12 A. I had worked for quite a while with training new  
13 recruits and was very interested in it. And my  
14 wife and I discussed it as an opportunity to  
15 improve my skills. And so we viewed it -- Even  
16 though I would not be working part-time anywhere  
17 because I would be coming off line, it was an  
18 opportunity that I needed to take and see if I  
19 could make it work and try to develop my skills.

20 Q. And then before that you said you were a team  
21 leader, correct?

22 A. Yes, sir.

23 Q. And how long were you a team leader?

1 A. From March of 1994 until approximately March  
2 2001.

3 Q. And what process did you go through to become --  
4 Well, what were you before you were a team  
5 leader?

6 A. A firefighter.

7 Q. What process did you go through to be promoted  
8 from firefighter to team leader?

9 A. Internal structured interview.

10 Q. Internal structured interview?

11 A. Yes, sir.

12 Q. Did you have to take a test?

13 A. No. We had -- there were -- I think we did --  
14 There was a interview phase, and then we also  
15 had to do paperwork, prove capability of doing  
16 paperwork, and I believe there was a hot seat  
17 exercise.

18 Q. What year was it you were promoted to team  
19 leader?

20 A. 1994.

21 Q. Didn't have to undergo an assessment center,  
22 correct?

23 A. Not an assessment center, no, sir.

1 Q. Didn't have to take a test, correct?

2 A. No, sir.

3 Q. Do you recall who was promoted with you to team  
4 leader in 1994?

5 A. About a month after I was -- a month or two  
6 months after I was, Terry Smith was promoted.

7 Q. So at the time you were promoted, you were the  
8 only one. And then about a month later Terry  
9 Smith was promoted?

10 A. Yes, sir. There was a list, I believe, that had  
11 been formed. And as positions came open, people  
12 were promoted up.

13 Q. Is Terry Smith still with the department?

14 A. No, sir. He retired.

15 Q. Was he white or black?

16 A. He's white.

17 Q. And then was firefighter your first position  
18 with the City of Auburn --

19 A. Yes, sir.

20 Q. -- Fire Department?

21 Where were you employed before the City of  
22 Auburn Fire Department?

23 A. Let's see. In 1978 and '79 I was going to

1 school at Auburn University and was working  
2 part-time at Tyson's Grocery. I worked on the  
3 family farm some in Macon County and any other  
4 odd jobs at the time.

5 Q. Just so it's clear on the record, what was your  
6 position with the fire department from February  
7 2006 through May of 2006?

8 A. Would have been the deputy chief.

9 Q. Did you participate in the decision-making  
10 process concerning the battalion chief  
11 promotion?

12 A. Yes, sir. Collectively there were a group of us  
13 who made decisions on that.

14 Q. Why did there need to be a battalion chief  
15 promotion in 2006?

16 A. We had several battalion chiefs who were  
17 retiring and several more who had the time in  
18 service to retire so we wanted to go ahead and  
19 get that accomplished.

20 Q. During the initial meetings about that promotion  
21 before CWH was hired, do you recall discussions  
22 that y'all had as a group about what the process  
23 would entail for the promotion of battalion



1 chief?

2 A. I think there were probably some general  
3 discussions about what we should include.

4 Q. What do you remember about those discussions?

5 A. That what we were looking for or what components  
6 of an assessment center would best measure the  
7 candidates in the process. We may have  
8 discussed role plays or in-baskets or written  
9 exams or hot seat exercises, tactical exercise,  
10 any number of things.

11 Q. Was it a concern of yours that the City of  
12 Auburn Fire Department comply with the 1991  
13 settlement order marked as Plaintiff's Exhibit 3  
14 pursuant to the battalion chief promotion in  
15 2006?

16 MR. MORGAN: Object to the form.

17 A. Not greatly, sir, no.

18 Q. It was not a concern of the City's, correct?

19 A. Not a concern of mine.

20 MR. MORGAN: Object to the form.

21 Q. Not a concern of yours that you comply with the  
22 order, correct?

23 A. What we viewed -- That was a decision that would

1           have been made above my grade at the time. My  
2           concern was that we identify the best way to  
3           find a candidate -- the best candidates.

4       Q.   And the order itself was not a concern of yours  
5           personally?

6       A.   Not mine personally, no, sir.

7       Q.   And in these meetings and in deciding how y'all  
8           were going to make the battalion chief  
9           promotions, did you ever sit down and read that  
10          order and say, okay, well, we've got to comply  
11          with this part and this part?

12      A.   I don't believe I did, no, sir.

13      Q.   Did you know at the time whether or not the City  
14          of Auburn was required to comply with that order  
15          for the battalion chief promotion in 2006?

16                   MR. MORGAN: Object to the form.

17      A.   I did not know, no, sir.

18      Q.   You did not know?

19      A.   No.

20      Q.   Whose decision was it to use an assessment  
21          center as a part of this promotion process to  
22          battalion chief?

23      A.   I think that goes back to the collective

1 discussions that we had, that that would be one  
2 of the best methodologies to determine who was  
3 the most highly qualified candidates.

4 Q. Is that something that's commonly done in fire  
5 departments to your knowledge, that in order to  
6 determine promotions, outside assessments are  
7 done?

8 A. Assessment centers --

9 Q. Assessment centers.

10 A. -- or assessment processes are becoming more and  
11 more common in fire service organizations. It's  
12 an expensive process, but it's -- typically what  
13 they find is that the best candidates rise to  
14 the top because you're measuring against  
15 multiple different areas and multiple criteria.

16 Q. And you understand that you can conduct an  
17 assessment center or pay somebody to conduct an  
18 assessment center without having a written test  
19 as a component of the process, correct?

20 A. A written test does not have to be a component,  
21 but it can be.

22 Q. It doesn't have to be, though.

23 A. Doesn't have to be.

1 Q. If a written test is to be a component of a  
2 promotional process, it is not required that  
3 there be a cutoff score; is that correct?

4 A. That's left up to the individual agency is  
5 typically what's done I would think, if they  
6 want to impose one or not.

7 Q. Well, who imposed a cutoff score for the written  
8 test that we've been talking about today for the  
9 battalion chief promotion in 2006?

10 A. Again, the group that's been discussed several  
11 times today: Steve Reeves, Bill James, Larry  
12 Langley, myself, and CWH's personnel when they  
13 arrived at that part. We all discussed it, and  
14 that was the option.

15 Q. That was the option --

16 A. That was the option that was chosen.

17 Q. But you'll agree with me that the City of Auburn  
18 Fire Department had ultimate discretion as to  
19 whether or not there would be, number one, a  
20 test, correct?

21 MR. MORGAN: Object to the form.

22 A. Yes, sir.

23 Q. And number two, y'all had ultimate discretion as

1 to whether or not that test would contain a  
2 cutoff score, correct?

3 MR. MORGAN: Object to the form.

4 A. Yes, sir. As advised by CWH, our consultant.

5 Q. But y'all have the ultimate decision-making  
6 power?

7 MR. MORGAN: Object to the form.

8 A. Yes, sir.

9 Q. And you heard Mr. Hancock's questions earlier  
10 today to Mr. Reeves, I guess, where he suggested  
11 that CWH attempted to persuade or encourage the  
12 City of Auburn not to use a cutoff score. Did  
13 you hear those questions?

14 A. I heard those questions.

15 Q. Do you recall that?

16 A. No, sir.

17 Q. Can you testify one way or the other about what  
18 you remember CWH advising you and the City of  
19 Auburn about a cutoff score?

20 A. What I recall was that if you chose to use one  
21 that it needed to be that way throughout the  
22 assessment on all components.

23 Q. That cutoff scores would be used on every

1 component?

2 A. Yes, sir.

3 Q. Did the City of Auburn use cutoff scores on all  
4 components of the battalion chief promotion  
5 process in 2006?

6 A. Yes, sir. I believe so.

7 Q. And if CWH says that it encouraged you and the  
8 City of Auburn not to use a cutoff score, you're  
9 testifying that's incorrect?

10 MR. MORGAN: Object to the form.

11 A. Can you repeat that?

12 Q. Yeah.

13 If CWH is going to say in this case that  
14 they tried to encourage you and the City of  
15 Auburn not to use a cutoff score for that test,  
16 you're going to testify that that's incorrect;  
17 is that correct?

18 MR. MORGAN: Object to the form.

19 A. I'm not trying to be difficult. It's that when  
20 you through that last "that's correct" --

21 Q. Forget that last correct. Let me ask it a  
22 different way.

23 Are you going to testify that CWH did not

1 recommend to you and the City of Auburn that you  
2 not use a cutoff score?

3 MR. MORGAN: Object to the form.

4 A. I don't recall them specifically saying that,  
5 no, sir.

6 Q. You don't recall? Is that your testimony?

7 A. Yes, sir.

8 MR. MORGAN: Wait. Object to the  
9 form of that question.

10 Q. Let's ask it again.

11 You don't recall whether CWH encouraged you  
12 and the City not to use a cutoff score?

13 MR. MORGAN: Object to the form.

14 A. No, they did not encourage us not to use it. I  
15 don't recall that they did.

16 Q. And that's my question. You don't recall or  
17 they did not do it?

18 A. I don't recall that they did -- that they did  
19 not encourage us to use a cutoff.

20 Q. You don't --

21 MR. MORGAN: His question -- You're  
22 asking if they do not recall, and  
23 what he's saying is I don't recall

1                   them doing that.

2                   MR. HORSLEY: And that's why I want  
3                   to be clear about it.

4                   MR. MORGAN: He doesn't recall is  
5                   what you're asking him.

6                   MR. HORSLEY: Exactly. But I'm  
7                   making sure --

8       Q.       You're not saying that it didn't happen. You're  
9       saying you don't recall whether it happened or  
10      not?

11                  MR. MORGAN: Object to the form. Go  
12                  ahead.

13      Q.       We're going to get it straight before we move  
14      on.

15                  I'm going to ask you two questions. The  
16      first one: Do you remember whether CWH  
17      attempted to encourage the City of Auburn not to  
18      use a cutoff score?

19                  MR. MORGAN: Object to the form.

20      A.       I do not remember them encouraging us not to use  
21      a cutoff.

22      Q.       And the second question is: The answer you just  
23      gave me is, I don't remember; is that correct?



1 MR. MORGAN: Object to the form.

2 A. That's correct.

3 Q. Was it you, in fact, that suggested the cutoff  
4 score of 70 to other members of the group with  
5 the City of Auburn and CWH?

6 A. I may have, yes, sir.

7 Q. And why did you suggest 70 as a cutoff score, if  
8 you did?

9 A. As we were having the discussion with CWH and  
10 the rest of the group, it was agreed that that  
11 was a state certification standard, that you  
12 could not obtain a certification without scoring  
13 a minimum of 70 on an exam, that that was a  
14 standard in the three to five classes that the  
15 National Fire Academy has tests in. That was  
16 also an educational standard, that anything  
17 below a 70 was not a transferable grade -- i.e.,  
18 a "D" in most schools -- and therefore would not  
19 meet an educational standard as well.

20 So those three items were the argument-- my  
21 side of an argument -- not argument but  
22 discussion points -- in that saying that if you  
23 could not obtain a 70, you really hadn't

1           achieved anything.

2       Q.     So --

3       A.     That was transferable.

4       Q.     So it sounds to me like you did suggest 70 as  
5           the cutoff score.

6       A.     I'm sure in the discussion with everybody else,  
7           yeah, we -- Again, I may have suggested it, but  
8           I had thought about it.

9       Q.     Was it your perception that the people at CWH  
10           didn't know all that stuff you just told me  
11           about the 70 cutoff score?

12      A.     No, sir. I believe they knew.

13      Q.     Were they suggesting a different cutoff score?

14      A.     Not that I recall.

15      Q.     Was there some reason why you were having to  
16           explain all the reasons why 70 should be a  
17           cutoff score to the people at CWH that you feel  
18           like already knew all the things you were  
19           telling them?

20      A.     Well, I think it was part of the discussion as a  
21           group: What would be your -- What would be your  
22           points to make that decision on.

23      Q.     I think you've already testified to this, but

1           it's your testimony that you decided in  
2           conjunction with the other members of the group  
3           with the City of Auburn along with CWH that a  
4           test that included a cutoff score should be used  
5           in advance of the assessment center, correct?

6                       MR. MORGAN: Object to the form.

7       A.    Yes, sir.

8       Q.    You couldn't get to the assessment center  
9           without passing the test, correct?

10                   MR. MORGAN: Object to the form.

11      Q.    Is that correct?

12      A.    That's correct.

13      Q.    I guess you heard my questions to Chief Langley  
14           a minute ago or maybe -- I don't remember who it  
15           was. But you'll agree with me that the test and  
16           the assessment center are two separate entities;  
17           is that correct?

18                   MR. MORGAN: Object to the form.

19      A.    No, sir, I don't agree with you.

20      Q.    You don't agree with that.

21                   So you disagree with -- I'm not going to  
22           read it again. You disagree with the definition  
23           of assessment center provided by CWH in the

1 Auburn Fire Division Orientation Manual?

2 MR. MORGAN: Object to the form.

3 A. May I read it, sir?

4 Q. Sure. It's under, What Is an Assessment Center.

5 A. I agree with portions of this, but I don't agree  
6 with the entire definition they are using.

7 Q. So you disagree with the entire definition of  
8 assessment center provided by CWH, which is the  
9 company y'all contracted with in order to  
10 conduct the assessment center; is that correct?

11 MR. MORGAN: Object to the form.

12 A. Not with the entire definition, no, sir.

13 Q. So it's your testimony that a test -- that this  
14 test for the battalion chief was part of an  
15 assessment center? Is that what you're saying?

16 A. Yes, sir.

17 Q. Isn't the point of an assessment center that  
18 somebody neutral --

19 (Brief interruption.)

20 Q. Isn't the main objective behind an outside  
21 assessment center that the assessment center is  
22 conducted by someone neutral that has no  
23 connection with the fire department?

1 MR. MORGAN: Object to the form.

2 A. Can you repeat that?

3 Q. Yeah.

4 Isn't an outside assessment center -- isn't  
5 the objective of that to have assessors from  
6 outside the department come in neutral and make  
7 objective decisions about the applicants, people  
8 who are not associated with the City fire  
9 department?

10 MR. MORGAN: Object to the form.

11 Q. Otherwise why don't you do your own assessment?

12 A. Well, again, I'm not a specialist in developing  
13 an assessment center. The objective will be to  
14 hire consultants to assist you in identifying  
15 the things that would best measure candidates.  
16 And it could be -- If I may, for example,  
17 Birmingham, Jefferson County, is internal. It's  
18 part of their personnel board. We don't have  
19 that resource here so we would have to find that  
20 resource from somebody. And so we would hire a  
21 consultant to come in and help us establish an  
22 assessment process. Not necessarily an  
23 assessment center but an assessment process.

1 Q. So it's not your understanding that an outside  
2 assessment center is supposed to be neutral or  
3 not associated in any way with the City of  
4 Auburn?

5 MR. MORGAN: I object to the form.

6 A. Can you repeat it one more time, sir? I'm  
7 sorry.

8 Q. I was trying to confirm what you just said, that  
9 it's not your understanding that the assessment  
10 center used for the battalion chief promotion  
11 was supposed to be a neutral third-party  
12 assessment center.

13 MR. MORGAN: Object to the form.

14 A. That's correct. We hired an agency to come in  
15 and help us establish an assessment process.

16 Q. And, in fact, it wasn't neutral because you  
17 actually made decisions about how that process  
18 would work, correct?

19 MR. MORGAN: Object to the form.

20 A. We consulted with our consultant.

21 Q. Right.

22 A. And then -- Yes, we made some decisions.

23 Q. And you made the ultimate decision about whether

1 the test would be given and whether there would  
2 be a cutoff score, correct?

3 A. We collectively, and CWH agreed to that.

4 (Plaintiff's Exhibit 19 marked for  
5 identification.)

6 Q. What we've marked as Exhibit 19 is a letter  
7 dated April 28, 2006 from you to Horace  
8 Clanton. First of all, if you could, identify  
9 that as your letter.

10 A. Yes, sir. This appears to be the letter that I  
11 wrote in response to, I believe, his grievance.

12 Q. Did you write the exact same letter -- I don't  
13 think I could find it this morning, but did you  
14 write the exact same letter to Gerald Stephens  
15 and Eddie Ogletree to the best of your memory?

16 A. Yes, sir. It should have been the same letter.

17 Q. The part that is highlighted in this letter, if  
18 you would read that, please.

19 A. A concern CWH had was that some of the  
20 candidates would not be prepared for the job of  
21 battalion chief based on their experience and  
22 rank.

23 Q. Can you explain that sentence to us?

1 A. As far as -- What that's referencing was that  
2 when we opened this up, which we were -- again,  
3 our job descriptions didn't stop from  
4 happening -- when we opened that up, CWH was  
5 concerned those who were in ranks below would  
6 not be as qualified, would not have the rank and  
7 the experience or the time serving in a rank to  
8 be competitive.

9 Q. So CWH was concerned about time in grade  
10 criteria for the battalion chief promotion?

11 MR. MORGAN: Object to the form.

12 A. I don't know that it was necessarily time in  
13 grade. I think they were looking at experience  
14 in position, yes, sir.

15 Q. And that's an important part of being promoted  
16 to battalion chief, is it not?

17 MR. MORGAN: Object to the form.

18 A. I believe so.

19 Q. And how did you know they were concerned about  
20 that?

21 A. Obviously it was part of the discussion at some  
22 point.

23 Q. They were concerned that the people who were



1 going to apply for the job of battalion chief  
2 were not qualified; is that correct?

3 MR. MORGAN: Object to the form.

4 A. I couldn't speak about their concern about  
5 qualification. I think it was about experience  
6 or rank, time in rank. I hesitate to speak for  
7 what CWH's concern was specifically.

8 Q. Just for clarification, I just found the exact  
9 same letter you sent to Lieutenant Stephens.  
10 I've marked it as Exhibit 20.

11 Is that what that is, the exact same letter  
12 you sent to Lieutenant Stephens?

13 (Plaintiff's Exhibit 20 marked for  
14 identification.)

15 A. Yes, sir. They appear to be the same.

16 (Plaintiff's Exhibit 21 marked for  
17 identification.)

18 Q. I'm going to mark this as one exhibit. It's  
19 21. It will be two memos, the first one dated  
20 February 17, '06 and then February 23, '06  
21 regarding the battalion chief promotion.

22 Is the first page of that document a memo  
23 that you issued?

1 A. Yes, sir. It looks like it.

2 Q. And then what precipitated the second memo, if  
3 you know, issued by Chief Langley?

4 A. The application of Chris Turner for the  
5 battalion chief's position.

6 Q. And was it then after the second memo went out  
7 that CWH became concerned about the  
8 qualifications of those who were going to apply  
9 for battalion chief?

10 A. I don't know if it was before or after, sir.

11 Q. Well, they wouldn't have known before February  
12 23 that probationary and nonprobationary  
13 firefighters and probationary lieutenants were  
14 eligible for the battalion chief promotion,  
15 would they?

16 A. I don't know when they would have obtained these  
17 or when they would have stated that concern. I  
18 can't speak for when they stated that concern.

19 Q. You'll agree with me that as of the date of your  
20 memo, February 17, the only eligible applicants  
21 were current nonprobationary lieutenants,  
22 correct?

23 A. Yes, sir.

1 Q. And then that changed?

2 A. Yes, sir.

3 Q. How many years have you been with the City of  
4 Auburn Fire Department?

5 A. Part-time and full-time since 1980. So 28.

6 Q. Do you have an estimate since 1991 of how many  
7 black firemen the City of Auburn has hired as  
8 full-time employees?

9 A. As full-time?

10 Q. Yes, sir.

11 A. Probably between four and seven. Not specific.

12 Q. Between four and seven?

13 A. Yeah.

14 (Brief off-the-record discussion.)

15 Q. Can you name those four -- However many it was,  
16 four or seven, can you name them?

17 A. In 1991 beginning with Thomas Scott, Chris  
18 Turner, Matthew Holland, Gerald Stephens, Kevin  
19 Harper. That's who I remember right now.

20 Q. And they were hired at different times?

21 A. Yes, sir.

22 Q. Between 1991 and now; is that correct?

23 A. Yes, sir. Most of them in the '90s I would

1 suspect.

2 Q. And some of those were hired as a direct result  
3 of the lawsuit settlement, correct?

4 A. Of one of the settlements. I believe Chris  
5 Turner and Thomas Scott.

6 Q. Also during that period of time, can you  
7 estimate how many white full-time firemen had  
8 been hired by the City of Auburn?

9 A. From 1991 to the present?

10 Q. Uh-huh (positive response).

11 A. I'm really not sure how many.

12 Q. Would you agree with me if I suggested three per  
13 year since that time?

14 A. That may be right. Again, we could look at the  
15 date of hire records and be more specific.

16 Q. Are you aware of any black student firefighter  
17 since 1991 who has been hired full-time by the  
18 City of Auburn Fire Department?

19 A. Lieutenant Gerald Stephens and Kevin Harper both  
20 came from the program. There may have been  
21 somebody else. I'm not sure.

22 Q. What happened to Mr. Harper?

23 A. I think he resigned or was dismissed. I don't

1 know specifically what happened to him.

2 Q. Do you recall when?

3 A. No, sir.

4 Q. During your entire time with the City of Auburn  
5 Fire Department, has there ever been a black  
6 fireman that achieved a rank beyond battalion  
7 chief?

8 A. No, sir.

9 MR. HORSLEY: Give me just a minute.

10 (Brief recess.)

11 Q. (Continuing by Mr. Horsley) Earlier I said  
12 since you've been with the Auburn Fire  
13 Department has any black ever achieved the rank  
14 beyond battalion chief.

15 Now my question is: Has any black fireman  
16 achieved any rank beyond lieutenant since the  
17 time you've been with the Auburn Fire  
18 Department?

19 A. No, sir. I don't believe so.

20 Q. You stated earlier that when you went from team  
21 leader to training officer that that was a  
22 lateral transfer, correct?

23 A. Yes, sir.

1 Q. And that there was no pay increase or rank  
2 increase as a result of that; is that correct?

3 A. That's right.

4 Q. Is it not true that shortly after you became the  
5 training officer, you went from a pay grade of  
6 18 to 20?

7 A. In 2004 as a process of reclassification by  
8 Condrey & Associates, it was identified I was  
9 doing the same job as the police training  
10 officer and therefore the job should pay  
11 commensurate and be rank commensurate.

12 Q. How much longer after you became training  
13 officer was it that you moved from an 18 to a 20  
14 pay scale?

15 A. Three to three-and-a-half years.

16 MR. HORSLEY: That's all.

17 MR. MORGAN: I've got a couple of  
18 questions.

19 **EXAMINATION**

20 **BY MR. MORGAN:**

21 Q. What is it you don't remember? You don't  
22 remember any conversation or you don't remember  
23 CWH telling you not to use a cutoff score?

1 MR. HORSLEY: Object to the leading.

2 A. I don't remember CWH ever telling us not to use  
3 a cutoff.

4 Q. Now, let me show you Plaintiff's Exhibit 19, the  
5 concern of CWH about some candidates not being  
6 prepared for battalion chief based on experience  
7 and rank.

8 Did that concern come up after the  
9 eligibility was opened up to everybody?

10 A. I believe so, yes, sir.

11 MR. HORSLEY: Object to the form.

12 Q. That concern had to do with firefighters being  
13 eligible to apply for battalion chief?

14 A. Yes, sir.

15 Q. Were any of the people who were promoted to  
16 battalion chief firefighter -- rank of  
17 firefighter?

18 A. No, sir.

19 Q. And Lovvorn, Jordan, Hartsfield, and Darby, had  
20 they all been student firefighters?

21 A. Yes, sir.

22 Q. Are student firefighters certified to be  
23 firefighters?

1 A. Yes, sir.

2 Q. But that time doesn't count towards their  
3 seniority once they become career firefighters?

4 MR. HORSLEY: Object to the form.

5 Q. Does it or does it not?

6 A. We haven't counted it towards -- We don't count  
7 seniority typically for any reason. We don't  
8 use it for promotions or anything.

9 Q. But as a student firefighter, those people are  
10 certified and do they do everything that a  
11 career firefighter does?

12 MR. MORGAN: Object to the form.

13 A. For the most part, yes, sir.

14 Q. How long has Lovvorn been a certified  
15 firefighter working with the City of Auburn  
16 either as a student firefighter or a career  
17 firefighter?

18 A. Probably ten or more years.

19 Q. And how about Jordan?

20 MR. HORSLEY: Objection.

21 A. Twelve years.

22 Q. How about Hartsfield?

23 MR. HORSLEY: Object to the form.



1 A. Approximately ten years.

2 Q. And how about Darby?

3 A. Thirteen to fourteen years. Twelve to fourteen  
4 years. I'm sorry.

5 Q. In your opinion were they in any way lacking in  
6 experience or job knowledge to be a battalion  
7 chief?

8 MR. HORSLEY: Object to the form.

9 A. No, sir. They showed themselves to be the best  
10 candidates.

11 MR. MORGAN: That's all I've got.

12 MR. HORSLEY: I forgot to mark

13 Langley's answers to

14 interrogatories and Lamar's.

15 (Plaintiff's Exhibits 22 & 23 marked  
16 for identification.)

17 MR. HORSLEY: What I have marked as  
18 22 are Chief Langley's answers to  
19 interrogatories. And these are  
20 going to remain the same once --  
21 or the signed copy is going to be  
22 the same as Exhibit 22, correct,  
23 Randall?

1 MR. MORGAN: Supposed to be.

2 MR. HORSLEY: Now, 23 are Lee Lamar's  
3 responses to my interrogatories.

4 **EXAMINATION**

5 **BY MR. HORSLEY:**

6 Q. Have you seen those? Have you signed those?

7 A. Yes, sir.

8 Q. And those are your sworn answers to my  
9 interrogatories, correct?

10 A. Yes, sir.

11 MR. HORSLEY: That's all.

12 (Deposition concluded at  
13 approximately 3:45 p.m.)

14 \* \* \* \* \*

15 FURTHER DEPONENT SAITH NOT

16 \* \* \* \* \*

17 **REPORTER'S CERTIFICATE**

18 STATE OF ALABAMA:

19 MONTGOMERY COUNTY:

20 I, Pamela A. Wilbanks, CCR, Registered  
21 Professional Reporter, and Commissioner for the State  
22 of Alabama at Large, do hereby certify that I reported  
23 the deposition of:

1 LEE Y. LAMAR, JR.

2 who was first duly sworn by me to speak the truth, the  
3 whole truth and nothing but the truth, in the matter  
4 of:

5 EDDIE OGLETREE, an individual,

6 GERALD STEPHENS, an

7 individual,

8 Plaintiffs,

9 Vs.

10 CITY OF AUBURN, a municipality

11 in the State of Alabama, LARRY

12 LANGLEY, an individual, LEE LAMAR,

13 an individual, BILL HAM, JR., an

14 individual, STEVEN A. REEVES, an

15 individual, BILL JAMES, an

16 individual, CHARLES M. DUGGAN, an

17 individual, and CORTEZ LAWRENCE,

18 an individual,

19 Defendants.

20 In The U.S. District Court

21 For the Middle District of Alabama

22 Eastern Division

23 3:07-CV-867-WKW

ORIGINAL

1 on Wednesday, July 30, 2008.

2 The foregoing 43 computer printed pages  
3 contain a true and correct transcript of the  
4 examination of said witness by counsel for the parties  
5 set out herein. The reading and signing of same is  
6 hereby waived.

7 I further certify that I am neither of kin nor  
8 of counsel to the parties to said cause nor in any  
9 manner interested in the results thereof.

10 This 5th day of August 2008.

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23

Pamela A. Wilbanks (74 M.C.)  
Pamela A. Wilbanks, ACCR #334  
Expiration Date: 9-30-2008  
Registered Professional Reporter  
and Commissioner for the State  
of Alabama at Large

**DEPOSITION TESTIMONY OF  
LARRY LANGLEY**

ORIGINAL

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in the State of Alabama, LARRY  
LANGLEY, an individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants.

\* \* \* \* \*

DEPOSITION OF LARRY M. LANGLEY, taken pursuant  
to stipulation and agreement before Pamela A. Wilbanks,  
Certified Court Reporter, ACCR# 391, Registered  
Professional Reporter and Commissioner for the State of  
Alabama at Large, in the Conference Room of Auburn City  
Hall, 144 Tichenor Avenue, Auburn, Alabama, on  
Wednesday, July 30, 2008, commencing at approximately  
2:20 p.m.

**APPEARANCES**

**FOR THE PLAINTIFF:**

Mr. Richard F. Horsley  
KING, HORSLEY & LYONS  
Attorneys at Law  
1 Metroplex Drive  
Suite 280  
Birmingham, AL 35209

**FOR THE DEFENDANT:**

Mr. Randall Morgan  
HILL, HILL, CARTER, FRANCO, COLE & BLACK  
Attorneys at Law  
425 South Perry Street  
Montgomery, Alabama

**ALSO PRESENT:**

Mr. D'Arcy Wernette  
Mr. Steven Reeves  
Mr. Bill James  
Mr. Lee Lamar  
Mr. Eddie Ogletree  
Mr. Gerald Stephens

\* \* \* \* \*

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**STIPULATION**

1  
2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that the  
4 deposition of **LARRY M. LANGLEY** is taken pursuant to the  
5 Alabama Rules of Civil Procedure and that said  
6 deposition may be taken before Pamela A. Wilbanks,  
7 Registered Professional Reporter and Commissioner for  
8 the State of Alabama at Large, without the formality of  
9 a commission, that objections to questions other than  
10 objections as to the form of the question need not be  
11 made at this time but may be reserved for a ruling at  
12 such time as the said deposition may be offered in  
13 evidence or used for any other purpose by either party  
14 provided for by the Statute.

15 It is further stipulated and agreed by and  
16 between counsel representing the parties in this case  
17 that the filing of said deposition is hereby waived and  
18 may be introduced at the trial of this case or used in  
19 any other manner by either party hereto provided for by  
20 the Statute regardless of the waiving of the filing of  
21 the same.

22 It is further stipulated and agreed by and  
23 between the parties hereto and the witness that the



1 signature of the witness to this deposition is hereby  
2 not waived.

3 \* \* \* \* \*

4 **LARRY M. LANGLEY**

5 The witness, after having first been duly  
6 sworn to speak the truth, the whole truth and nothing  
7 but the truth testified as follows:

8 **EXAMINATION**

9 **BY MR. HORSLEY:**

10 Q. Please tell us your full name.

11 A. Larry Michael Langley.

12 Q. My name is Richard Horsley. The same thing.

13 I'm going to ask you questions. And if you  
14 don't understand, tell me to repeat. I'm going  
15 to assume you understood and gave the answer you  
16 intended to give once you answer. Okay?

17 A. Okay.

18 Q. Where do you currently reside?

19 A. 81 Lee Road 374, Valley, Alabama 36854.

20 Q. And you're retired from the Auburn Fire  
21 Department; is that correct?

22 A. Right.

23 Q. When did you retire?

1 A. November 30, 2007.

2 Q. 2007?

3 A. Uh-huh (positive response).

4 MR. MORGAN: Yes. You need to make  
5 an audible answer.

6 Q. Yeah. I'm sorry.

7 MR. MORGAN: You need to say "yes" or  
8 "no". Don't say "uh-huh".

9 Q. Say "yes" or "no" rather than "uh-huh" or  
10 "huh-uh" because she can't take that down.

11 So you retired in November 2007?

12 A. Yes.

13 Q. And what was the reason for your retirement?

14 A. I had 30 years in with the City.

15 Q. Just ready to retire?

16 A. Ready to retire.

17 Q. How long were you the fire chief for the City of  
18 Auburn?

19 A. Acting chief and deputy of public safety  
20 director a little over ten years.

21 Q. Deputy public safety director, tell me what that  
22 is.

23 A. Our public safety director -- in I think it was

1 '02 or '03 -- changed our title from police  
2 chief and fire chief and the building code  
3 official and communications director to deputy  
4 public safety director over police operations or  
5 fire operations. It was just a name change.

6 Q. So if I call it fire chief, it's the same thing?

7 A. Same thing.

8 Q. You were the fire chief for about ten years?

9 A. Yeah.

10 Q. And what job did you hold immediately before you  
11 became the fire chief?

12 A. I was a battalion chief or shift commander.

13 Q. What year were you promoted to fire chief?

14 A. July of '97.

15 Q. And before that you were a shift commander, and  
16 then are you saying that position was changed to  
17 battalion chief?

18 A. Later in 2005 -- '04. Whenever we're talking  
19 about, it was changed. I just said battalion  
20 chief because it's --

21 Q. But you were already the chief at the time that  
22 it was changed to battalion chief?

23 A. Right.

1 Q. So before you were chief, you actually were a  
2 shift commander?

3 A. Yeah.

4 Q. And for how long were you a shift commander?

5 A. About a year and a half.

6 Q. What process did you go through to be promoted  
7 to chief from shift commander?

8 A. I didn't go through a process. The current  
9 chief resigned and went to Phenix City.

10 Q. What was his name?

11 A. Ronnie Blankenship. And I was asked by the  
12 current public safety director at that time if I  
13 would run the fire department until, you know,  
14 they went through a process. And they never  
15 went through a process. I just kept the job the  
16 whole time.

17 Q. You weren't required to interview, correct?

18 A. No.

19 Q. You weren't required to take any test, correct?

20 A. No.

21 Q. You weren't required to go through an assessment  
22 center, correct?

23 A. No.

1 Q. We've talked a little bit today about the job  
2 classification or changes from shift commander  
3 to battalion chief and from team leader to  
4 lieutenant. I'm assuming as a fire chief,  
5 you're familiar with the insignia that the  
6 firemen wear on their uniforms; is that correct?

7 A. Right.

8 Q. What's the difference between the insignia that  
9 a shift commander and a battalion chief wore?

10 A. The shift commander at that time -- Well, we was  
11 captain/shift commanders, and it was two bars.  
12 That's standard in the industry, two bars. Two  
13 bugles.

14 Q. And then when --

15 A. And then when the name changed to battalion  
16 chief, the recognized insignia for that is the  
17 three bugles.

18 Q. Would three bugles as opposed to two bugles not  
19 signify a promotion in rank within the  
20 department?

21 MR. MORGAN: Object to the form.

22 A. Not in this department, no.

23 Q. Are you saying that it would in some

1 departments, but --

2 A. Some departments may. But if they had the  
3 captain position still open and then the  
4 assistant chief, battalion chiefs, you would  
5 have different insignias on the collar for that.

6 Q. What did you wear as a chief?

7 A. Five bugles.

8 Q. Did anybody in the department have more than  
9 five bugles?

10 A. No.

11 Q. Would that signify that you were the highest  
12 level employee at the fire department --

13 A. Right.

14 Q. -- the fact that you had five bugles?

15 A. Right.

16 Q. And a lieutenant has how many bugles?

17 A. One bugle.

18 Q. And when the team leaders -- Well, what did a  
19 team leader have when that position existed?

20 A. The team leaders wore a gold collar brass. I  
21 think it had AFD wrote on it.

22 Q. They had no bugles, correct?

23 A. They had no bugles.

1 Q. And when they were reclassified as lieutenants,  
2 they would then wear insignia with one bugle?

3 A. Right.

4 Q. And you said earlier, I think, battalion chief  
5 has three bugles; is that correct?

6 A. Correct.

7 Q. Would battalion chief be the second highest  
8 level employee within the fire division?

9 A. Deputy chief.

10 Q. I'm sorry.

11 What does a deputy chief wear?

12 A. Four bugles.

13 Q. So it goes lieutenant, one bugle; battalion  
14 chief -- Wait a minute. Who has two bugles?

15 A. Captains.

16 Q. And then battalion chief, three bugles?

17 A. Right.

18 Q. Deputy chief, four bugles; and -- is that  
19 correct?

20 A. Correct.

21 Q. And chief, five bugles, correct?

22 A. Correct.

23 Q. And is it your testimony that the number of

1 bugles on the insignia does not indicate rank  
2 within the department?

3 MR. MORGAN: Object to the form.

4 A. In certain departments it does.

5 Q. But in the Auburn Fire Department, it does not?

6 A. We don't have -- The captain position they  
7 recognized as a battalion chief so they went to  
8 three bugles.

9 Q. But wouldn't you agree with me that the higher  
10 ranking employee you are, the more bugles you  
11 get on your insignia within the Auburn  
12 Department?

13 A. The way we structure it now, yes.

14 Q. The way you structure it now, yes?

15 A. Uh-huh (positive response).

16 Q. What about the way it was structured in 2006?

17 A. The way we were structured then, the team leader  
18 had the AFD. And we had two lieutenants, and  
19 one retired and that left Gerald.

20 Q. But you'll agree with me in 2006, the higher  
21 rank that you achieved would give you more  
22 bugles, is that correct, on your insignia; is  
23 that correct?



1 MR. MORGAN: Object to the form.

2 A. The higher the name would recognize the -- The  
3 name of the position recognized the amount of  
4 bugles.

5 Q. And the more bugles on an insignia would signify  
6 the higher position, correct?

7 MR. MORGAN: Object to the form.

8 A. With the deputy chief having four and the fire  
9 chief having five, yes.

10 Q. Right. That's logical, correct?

11 MR. MORGAN: Object to the form.

12 A. Uh-huh (positive response).

13 Q. Now, you said you served for a year and a half  
14 as the shift commander?

15 A. Right.

16 Q. And what job did you hold before shift  
17 commander?

18 A. Staff captain, rotating shift commander.

19 Q. Staff captain, is that the same thing as a  
20 captain or -- Well, what's the difference in a  
21 staff captain?

22 A. I worked eight to five in administration. And  
23 when one of the -- The rotating part, when one

1 of the shift commanders at that time would take  
2 off, I would work in their position on their  
3 shift.

4 Q. So going from that to shift commander was a  
5 promotion for you, correct?

6 A. Huh-uh (negative response). I didn't -- It was  
7 just a name change. It was no change in pay or  
8 nothing.

9 Q. And how did you get that position?

10 A. The staff captain?

11 Q. No. You're saying you were a staff captain and  
12 a rotating shift commander?

13 A. I filled in for the rotating shift commanders  
14 when they was on vacation or out sick.

15 Q. And then you were changed to full-time shift  
16 commander, correct?

17 A. When one of the shift commanders retired, I  
18 moved to that position.

19 Q. But in order to do that, you didn't have to take  
20 a test, correct?

21 A. No.

22 Q. You didn't have to go through an assessment  
23 center?

1 A. No. It was just a lateral move.

2 Q. You didn't have to do an interview, correct?

3 A. No.

4 Q. Did the bugles on your insignia change when you  
5 moved to shift commander?

6 A. No. I still had two.

7 Q. How long were you the rotating shift commander  
8 and staff captain?

9 A. I was promoted to staff captain in '94 --  
10 January of '94.

11 Q. From what position?

12 A. Firefighter.

13 Q. And what process did you go through to get  
14 promoted --

15 A. I went through an assessment center.

16 Q. You went through an assessment center.

17 Do you remember what company administered  
18 the assessment center?

19 A. Kathleen Robinson administered that one.

20 Q. And do you remember the components of that  
21 assessment center?

22 A. We had a hot seat, a role play, a in-basket, and  
23 something else. I don't remember what it was.

1 Q. Did you have to take a written test with a  
2 cutoff score?

3 A. No.

4 Q. And how many people received that promotion  
5 along with you?

6 A. Myself and Jimmy Brown.

7 Q. Jimmy Brown?

8 A. Me and him was promoted at the same time.

9 Q. Is he a white guy or black guy?

10 A. He was a white guy.

11 Q. Is he still with the department?

12 A. He's deceased.

13 Q. You heard me talking earlier about the  
14 assessment center. Is it your understanding --  
15 The assessment center that you went through did  
16 not include a test with a cutoff score, correct?

17 A. Correct.

18 Q. And there was no test with a cutoff score that  
19 was a prerequisite to your assessment center; is  
20 that correct?

21 A. That's correct.

22 Q. And then before firefighter, that was your first  
23 job with the City of Auburn?

1 A. No. I worked for Ampex Corporation.

2 Q. But that was your first job with the City of  
3 Auburn was --

4 A. Right.

5 Q. -- firefighter?

6 You heard me ask questions earlier, I  
7 assume, about the meetings that were held prior  
8 to the 2006 battalion chief promotion between  
9 you and Lee Lamar and Mr. Reeves and Mr. James.  
10 Do you specifically recall those meetings and  
11 what was discussed in those meetings?

12 A. Somewhat of them. I wasn't in all of them.  
13 Sometimes I was out of town when they had a  
14 meeting.

15 Q. Do you recall any discussions in those meetings  
16 about implementing a test with a cutoff score as  
17 a prerequisite for that job?

18 A. Yes.

19 Q. Whose decision was it?

20 A. I don't remember. I don't really remember how  
21 that come about. The only thing I know is  
22 during the conversations and everything between  
23 all of us, it come up.

1 Q. You can't testify about who with the City had  
2 the idea or made the decision to have a test  
3 with a cutoff score; is that correct?

4 A. No.

5 Q. Do you recall if that decision was made before  
6 the City contracted with CWH?

7 A. No. It was made along with CWH.

8 Q. Do you recall whether or not Lee Lamar was the  
9 individual that suggested the number of 70 as  
10 the test score cutoff?

11 A. Don't -- I can't testify to that, no.

12 Q. Does that seem familiar to you that he did or --

13 A. Well, 70 was discussed because it's a state  
14 standard to the fire college and National Fire  
15 Academy, and I remember the 70 score being  
16 discussed.

17 Q. Was there any discussion about using a test  
18 without a cutoff score and just using it as a  
19 part of the whole process?

20 A. I really don't remember if it was or not.

21 Q. Looking back on it, do you have any opinions  
22 about whether or not that would have been a  
23 better idea?

1 MR. MORGAN: Object to the form of  
2 that question.

3 A. No. I think the process went good.

4 Q. As a fire chief, did you feel like the people  
5 that should be promoted to battalion chief  
6 should have had significant experience with the  
7 Auburn Fire Department?

8 MR. MORGAN: Object to the form.

9 A. Again, it's what you're talking about on  
10 experience. Knowledge and stuff of fire  
11 techniques, fire tactics -- I think they should  
12 have had the knowledge. But experience, I don't  
13 know exactly what you mean by that.

14 Q. Well, knowledge, then. Do you feel like that  
15 the people that are promoted to battalion chief,  
16 that it was more important that they have the  
17 knowledge about firefighting or whether or not  
18 they could pass the test?

19 MR. MORGAN: Object to the form of  
20 the question.

21 A. If they had the knowledge of firefighting, they  
22 should have passed the test.

23 Q. Did you review the test yourself?

1 A. No. The only thing that I reviewed was -- CWH  
2 brought in a pack of questions. It was 150 or  
3 175 questions and about 60 situational judgment  
4 questions. And there was about nine or ten of  
5 us -- the battalion chiefs, HRM, Bill James,  
6 Deputy Chief Lamar, and myself -- and we  
7 reviewed the questions and turned back to CWH  
8 what we thought was consistent with the way the  
9 City of Auburn operated. Did I see the final  
10 test? No.

11 Q. You've never taken that test, correct?

12 A. No.

13 Q. Did you participate in any way in the decision  
14 to allow probationary lieutenants,  
15 nonprobationary and probationary firefighters to  
16 apply for the battalion chief position in 2006?

17 A. Participate? What --

18 Q. Were you a part of that decision?

19 A. Yes. We recognized that by the City policies  
20 that they was eligible to apply for it.

21 Q. Had those people I just identified ever been  
22 allowed to apply for battalion chief promotions  
23 before?



1 A. Which people?

2 Q. Probationary lieutenants --

3 A. Yes.

4 Q. -- non and probationary firefighters before  
5 2006?

6 A. Before 2006, yes.

7 Q. When were they allowed?

8 A. They was allowed to on team leader promotions,  
9 on just about every promotion we done. If they  
10 was still on probation, they could apply.

11 Q. I guess what I'm asking, though, is: Was there  
12 ever a captain or a battalion chief promotion  
13 before 2006 where probationary lieutenants and  
14 probationary and nonprobationary firefighters  
15 were allowed to apply?

16 A. The last captain/lieutenant promotion we done  
17 was in 1996, and I was a shift commander at that  
18 time.

19 Q. Is it true that in -- February 1 of 2006 when  
20 the team leaders were reclassified as  
21 lieutenants that Lieutenant Stephens was  
22 actually the only lieutenant in the department  
23 at that time?

1 A. Yes. Yes.

2 Q. Do you recall any discontent or dissatisfaction  
3 among white team leaders that lieutenant  
4 Stephens was the only lieutenant in the  
5 department?

6 A. No.

7 (Plaintiff's Exhibits 17 & 18 marked  
8 for identification.)

9 Q. I'll show you what I've marked as Plaintiff's  
10 Exhibits 17 and 18. It's the same letters we  
11 looked at before. Have you ever seen that  
12 before? Have you seen that before?

13 A. Yes.

14 Q. In response to that, is Exhibit 18 what you  
15 sent?

16 A. Yes.

17 Q. And in the third paragraph it says: Under our  
18 current city policies and job -- and, again,  
19 this letter is dated -- well, it's not dated.  
20 Yeah, it is. May 8 of 2006.

21 In the third paragraph it says: Under our  
22 current City policies and job descriptions,  
23 there is no time in grade policy and no

1 cumulative point system. Because of our current  
2 advancement criteria, any nonprobationary  
3 employee may participate in the assessment. The  
4 fire division is currently reviewing a Career  
5 Development Plan that addresses these criteria.

6 So when you wrote this letter, the City of  
7 Auburn was then reviewing a Career Development  
8 Plan that addressed the criteria of time in  
9 grade and a cumulative point system, correct?

10 MR. MORGAN: Object to the form.

11 A. Yes. We was working on one.

12 Q. And that would be a Career Development Plan  
13 meaning that people could be promoted within the  
14 department based on time in grade and a  
15 cumulative point system; is that correct?

16 MR. MORGAN: Object to the form.

17 A. Yes.

18 Q. Why was the City reviewing that?

19 MR. MORGAN: Object to the form.

20 A. We didn't have a current Career Development Plan  
21 that was really in place, and we was trying to  
22 develop one to set out guidelines for the  
23 firefighters where a career firefighter hired in

1 would know what he had to do to advance.

2 Q. For that Career Development Plan, you would  
3 consider a cumulative point system and time in  
4 grade as requirements to promote, correct?

5 MR. MORGAN: Object to the form.

6 A. Before?

7 Q. No. As a part of this Career Development Plan  
8 that y'all were looking into, you would consider  
9 time in grade and a cumulative point system for  
10 promotions; is that correct?

11 MR. MORGAN: Object to the form.

12 A. Yes. Once we got it there. But it wasn't in  
13 place at that time.

14 Q. Right. Well, has it ever gotten in place?

15 A. It hadn't been put in place when I retired in  
16 November.

17 Q. Do you agree that those are important criteria  
18 for promotions, time in grade and a cumulative  
19 point system?

20 MR. MORGAN: Object to the form.

21 A. Some of it, yes.

22 Q. Would those criteria have benefited Mr. Ogletree  
23 and Mr. Stephens in your opinion in their

1 application for battalion chief?

2 MR. MORGAN: Object to the form.

3 A. That's according to what points was assigned to  
4 it. We never had got down to that point.

5 Q. Just because I don't know, what would be an  
6 example of things considered in a cumulative  
7 point system? How would you accumulate points?

8 A. The amount of certifications you might have or  
9 college degrees, time in grade and stuff like  
10 that.

11 Q. What does time in grade mean?

12 A. How long you've worked in that, you know, grade,  
13 that position.

14 MR. HORSLEY: Let's take a minute.

15 (Brief recess.)

16 Q. (Continuing by Mr. Horsley) Are you familiar  
17 with Plaintiff's Exhibit 3, which is the 1991  
18 settlement order that we've talked about today?

19 A. I'm familiar with it. I haven't looked at it in  
20 over eight or nine -- It's been a long time  
21 since I looked it.

22 Q. Eight or nine years?

23 A. No.

1 Q. I thought you said --

2 A. Eight or nine months, ever how long it's been  
3 since I left, or it might have been longer than  
4 that.

5 Q. Do you know whether or not during the battalion  
6 chief promotions in 2006 that the City of Auburn  
7 was required to comply with that order?

8 MR. MORGAN: Object to the form.

9 Also calls for a legal opinion.

10 A. Repeat that.

11 Q. Yeah. During the battalion chief promotions in  
12 2006, do you know if the City of Auburn Fire  
13 Department was required to comply with that  
14 order?

15 A. By the process we was going through, I thought  
16 we was complying with that form.

17 Q. But the question was: Did you think y'all were  
18 required to comply with it?

19 MR. MORGAN: Object to the form.

20 A. Was we required? I never questioned it because  
21 the process I thought we was doing was meeting  
22 this criteria.

23 Q. Did you review that order before y'all

1           implemented the process for the battalion chief  
2           promotion that you recall?

3       A.    I don't remember if I did or not.

4       Q.    But you've heard earlier discussions about  
5           whether or not the order was still in force in  
6           2006. Did you know one way or the other whether  
7           or not that order was still in force?

8       A.    Really I don't know.

9       Q.    Am I correct in saying that the  
10           reclassification -- that the City did not  
11           consult this order before you reclassified the  
12           team leaders to lieutenants in February of '06,  
13           correct?

14                       MR. MORGAN: Object to the form.

15       A.    February?

16       Q.    When the team leaders were reclassified to  
17           lieutenants in February of 1 of 2006, do you  
18           recall whether or not the City consulted this  
19           order to see if that was proper or not?

20                       MR. MORGAN: Object to the form.

21       A.    Yes. Steve Reeves and the city attorney, you  
22           know, they read it, and that's when they come  
23           back with their judgment that we could make a

1 name change.

2 Q. Do you recall whether or not the City consulted  
3 this order before the captain was reclassified  
4 or renamed as battalion chief?

5 MR. MORGAN: Object to the form.

6 A. That I don't know. That was handled by the city  
7 manager, David Watkins, at that time.

8 Q. Do you know whether or not the Plaintiff's  
9 Exhibit 3 was consulted by the City before it  
10 reclassified the shift commander position to  
11 battalion chief?

12 MR. MORGAN: Object to the form.

13 A. Again, that was done by -- that decision was  
14 made by the city manager, David Watkins. I  
15 don't know if he did or not.

16 MR. HORSLEY: That's all. Thank you.

17 MR. MORGAN: I've got one or two  
18 questions.

19 **EXAMINATION**

20 **BY MR. MORGAN:**

21 Q. The lieutenant/team leader reclassification, at  
22 that time you testified lieutenant had a bar and  
23 the team leaders had what, something --



1 A. AFD insignia on the collar.

2 Q. Did they do the same job?

3 A. The job description was identical.

4 Q. Did they get the same pay?

5 A. Same pay.

6 Q. Was the lieutenant over a team leader?

7 A. No.

8 Q. Was that a promotion from team leader to  
9 lieutenant?

10 A. No. It was a name change only.

11 Q. You were asked about people being eligible to  
12 apply for the battalion chief promotion and the  
13 City opening it up for everybody.

14 A. Right.

15 Q. When you applied for captain in 1993 --

16 A. Yes.

17 Q. -- you were what rank?

18 A. Firefighter.

19 Q. Even though you were not a lieutenant, you were  
20 eligible to have applied for captain?

21 A. Right.

22 Q. And Eddie Ogletree as a firefighter in 1993  
23 could have applied for captain as well, couldn't

1 he?

2 A. Right.

3 MR. MORGAN: No further questions.

4 MR. HORSLEY: Thank you.

5 (Deposition concluded at  
6 approximately 2:40 p.m.)

7 \* \* \* \* \*

8 FURTHER DEPONENT SAITH NOT

9 \* \* \* \* \*

10 REPORTER'S CERTIFICATE

11 STATE OF ALABAMA:

12 MONTGOMERY COUNTY:

13 I, Pamela A. Wilbanks, CCR, Registered  
14 Professional Reporter, and Commissioner for the State  
15 of Alabama at Large, do hereby certify that I reported  
16 the deposition of:

17 LARRY M. LANGLEY

18 who was first duly sworn by me to speak the truth, the  
19 whole truth and nothing but the truth, in the matter  
20 of:

21 EDDIE OGLETREE, an individual,  
22 GERALD STEPHENS, an  
23 individual,

1 Plaintiffs,

2 Vs.

3 CITY OF AUBURN, a municipality  
4 in the State of Alabama, LARRY  
5 LANGLEY, an individual, LEE LAMAR,  
6 an individual, BILL HAM, JR., an  
7 individual, STEVEN A. REEVES, an  
8 individual, BILL JAMES, an  
9 individual, CHARLES M. DUGGAN, an  
10 individual, and CORTEZ LAWRENCE,  
11 an individual,  
12 Defendants.

13 In The U.S. District Court  
14 For the Middle District of Alabama  
15 Eastern Division  
16 3:07-CV-867-WKW

17 on Wednesday, July 30, 2008.

18 The foregoing 29 computer printed pages  
19 contain a true and correct transcript of the  
20 examination of said witness by counsel for the parties  
21 set out herein. The reading and signing of same is  
22 hereby not waived.

23 I further certify that I am neither of kin nor

ORIGINAL

31

1 of counsel to the parties to said cause nor in any  
2 manner interested in the results thereof.

3 This 5th day of August 2008.  
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11 Pamela A. Wilbanks (K.M.C.)  
12 Pamela A. Wilbanks, ACCR #334  
13 Expiration Date: 9-30-2008  
14 Registered Professional Reporter  
15 and Commissioner for the State  
16 of Alabama at Large  
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**DEPOSITION TESTIMONY OF  
WILLIAM JAMES**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in the State of Alabama, LARRY  
LANGLEY, an individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants.

\* \* \* \* \*

**DEPOSITION OF WILLIAM HOWARD JAMES**, taken  
pursuant to stipulation and agreement before Pamela A.  
Wilbanks, Certified Court Reporter, ACCR# 391,  
Registered Professional Reporter and Commissioner for  
the State of Alabama at Large, in the Conference Room  
of Auburn City Hall, 144 Tichenor Avenue, Auburn,  
Alabama, on Wednesday, July 30, 2008, commencing at  
approximately 1:20 p.m.

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**APPEARANCES**

**FOR THE PLAINTIFF:**

Mr. Richard F. Horsley  
KING, HORSLEY & LYONS  
Attorneys at Law  
1 Metroplex Drive  
Suite 280  
Birmingham, AL 35209

**FOR THE DEFENDANT:**

Mr. Randall Morgan  
HILL, HILL, CARTER, FRANCO, COLE & BLACK  
Attorneys at Law  
425 South Perry Street  
Montgomery, Alabama

**ALSO PRESENT:**

Mr. D'Arcy Wernette  
Mr. Steven Reeves  
Mr. Larry Langle  
Mr. Lee Lamar  
Mr. Eddie Ogletree  
Mr. Gerald Stephens

\* \* \* \* \*

EXAMINATION INDEX

BY MR. HORSLEY . . . . . 4

\* \* \* \* \*

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**STIPULATION**

It is hereby stipulated and agreed by and between counsel representing the parties that the deposition of **WILLIAM HOWARD JAMES** is taken pursuant to the Alabama Rules of Civil Procedure and that said deposition may be taken before Pamela A. Wilbanks, Registered Professional Reporter and Commissioner for the State of Alabama at Large, without the formality of a commission, that objections to questions other than objections as to the form of the question need not be made at this time but may be reserved for a ruling at such time as the said deposition may be offered in evidence or used for any other purpose by either party provided for by the Statute.

It is further stipulated and agreed by and between counsel representing the parties in this case that the filing of said deposition is hereby waived and may be introduced at the trial of this case or used in any other manner by either party hereto provided for by the Statute regardless of the waiving of the filing of the same.

It is further stipulated and agreed by and between the parties hereto and the witness that the



1 signature of the witness to this deposition is hereby  
2 not waived.

3 \* \* \* \* \*

4 **WILLIAM HOWARD JAMES**

5 The witness, after having first been duly  
6 sworn to speak the truth, the whole truth and nothing  
7 but the truth testified as follows:

8 **EXAMINATION**

9 **BY MR. HORSLEY:**

10 Q. Please tell us your full name.

11 A. William Howard James.

12 Q. And do you go by Bill James?

13 A. Yes.

14 Q. My name is Richard Horsley. I'm going to ask  
15 you some questions. Just like with Mr. Reeves,  
16 if you don't understand something or want me to  
17 rephrase it, just tell me and I will do so.

18 Once you answer a question, I'm going to assume  
19 you understood it and are giving the answer you  
20 intended to give. Okay?

21 A. Okay.

22 Q. Where do you currently reside?

23 A. 8371 Lee Road 188, Waverly.

1 Q. What's the ZIP Code out there?

2 A. 36879.

3 Q. Where are you currently employed?

4 A. City of Auburn.

5 Q. In what capacity with the City?

6 A. Public safety director.

7 Q. How long have you held that job?

8 A. October of 2004.

9 Q. Generally tell me what you do as a public safety  
10 director for the City of Auburn.

11 A. Provide administrative direction for the  
12 divisions in public safety, budgets, contract,  
13 personnel.

14 Q. What was your job immediately before that?

15 A. I was a building official with the City of  
16 Auburn.

17 Q. The building official?

18 A. Uh-huh (positive response).

19 Q. How long did you hold that job?

20 A. Fifteen years, sixteen years.

21 Q. Where were you immediately before that?

22 A. I worked with the economic development  
23 department for a year --

1 Q. City of Auburn?

2 A. -- with the City of Auburn prior to that.

3 Q. Before that where were you employed?

4 A. I worked for Castle and Algernon Blair, a  
5 contracting company out of Montgomery.

6 Q. What kind of contracting?

7 A. They did building contracting.

8 Q. Do you recall where you worked before that?

9 A. Self-employed in Tennessee.

10 Q. What did you do in Tennessee?

11 A. Built a few houses.

12 Q. Did you have a company name or ...

13 A. Worked with my brother-in-law.

14 Q. Was there a name of the company?

15 A. Blue Ridge Construction or Blue -- Blue Ridge  
16 maybe.

17 Q. Do you have relatives that reside in Lee County?

18 A. Yes.

19 Q. Can you tell me who they are, or if it's a lot  
20 of them --

21 A. I've got in-laws and three brothers and sisters  
22 and such.

23 Q. Just provide a list of your -- what I want -- I

1 don't want to spend a bunch of time going  
2 through them, but what I need to know is  
3 relatives in Lee County, Macon County, Lowndes  
4 County, Russell County, Montgomery County. I  
5 think that's it.

6 A. Okay.

7 Q. Macon. Did I say Macon?

8 Randall knows which counties they are.

9 A. Okay.

10 Q. You said that your job -- one of the elements of  
11 your job was dealing with personnel; is that  
12 correct?

13 A. Yes, sir.

14 Q. What aspects of personnel decisions are you  
15 involved in?

16 A. Review personnel actions, whether it be  
17 performance appraisals, corrective actions,  
18 things of that nature.

19 Q. Did you participate in any way in the battalion  
20 chief promotions back in 2006?

21 A. I did.

22 Q. What participation did you have in those  
23 promotions?

1 A. I was -- participated with the others that have  
2 been mentioned here today discussing what we  
3 were going to do for the promotion process.

4 Q. And I think you were a part of the group that  
5 Mr. Reeves named that decided how that promotion  
6 would take place; is that correct?

7 A. Yes. I had input, yes.

8 Q. And do you agree with him that that group of  
9 people decided to hire CWH to conduct the cutoff  
10 test?

11 A. Yes. Well, to hire CWH, yes.

12 Q. And the people that he named, were those the  
13 people that you remember being involved in that  
14 decision?

15 A. In the hiring of the company?

16 Q. Yes.

17 A. Yes.

18 Q. He also spoke about decisions or meetings that  
19 were had after CWH was hired. What I want to  
20 know is: Do you recall being in those meetings  
21 when discussions were held with CWH about the  
22 cutoff test and the assessment center?

23 MR. MORGAN: Object to the form.

1 A. Yes.

2 Q. Is it your memory that the City of Auburn was  
3 attempting to comply with the 1991 court order  
4 that we've talked about earlier during that  
5 promotion or was that not a consideration?

6 A. I don't recall that personally being a  
7 consideration.

8 Q. You don't recall specifically the order being  
9 something the City felt like it had to comply  
10 with pursuant to those promotions?

11 MR. MORGAN: Object to the form.

12 A. Right.

13 Q. Is that right?

14 A. Yes.

15 Q. And are you familiar with that order? Have you  
16 read it?

17 A. Not recently, but I have read it.

18 Q. Can you tell me why the City did not believe at  
19 that time that it was -- that it had to comply  
20 with the 1991 order?

21 MR. MORGAN: Object to the form.

22 A. I'm not sure I understand the question. In  
23 reference to what?

1 Q. You said you didn't feel like the 1991 order was  
2 a consideration in y'all's decision-making  
3 process for the battalion chief promotion in  
4 2006.

5 MR. MORGAN: Object to the form.

6 Q. Is that correct?

7 A. Whether we had to do an assessment center?

8 Q. Whether you had to comply with the order.

9 MR. MORGAN: Object to the form.

10 A. I guess -- I'm sorry. I don't understand.

11 Q. Let me ask it again.

12 When y'all were talking about the promotion  
13 to battalion chief and decided how that  
14 promotion was going to take place, when y'all  
15 were having these meetings, before and when you  
16 joined up with CWH, what I want to know is: Is  
17 it your memory that the City felt as though it  
18 was obligated to comply with the 1991 order  
19 pursuant to those promotions?

20 MR. MORGAN: Object to the form.

21 A. Whether it was obligated to follow that?

22 Q. Uh-huh (positive response).

23 A. No.

1 Q. The City did not believe it was, correct?

2 MR. MORGAN: Object to the form.

3 A. That we had to comply with the order?

4 Q. The City did not believe it had to comply with  
5 the order?

6 MR. MORGAN: Object to the form.

7 A. No, I don't want to say that. No.

8 Q. We're not connecting.

9 Are you saying that it's your memory the  
10 City did not believe it had to comply with the  
11 1991 order pursuant to the 2006 battalion chief  
12 promotions?

13 MR. MORGAN: Object to the form.

14 A. I'm sorry.

15 Q. That's okay.

16 Did you or did you not have to comply with  
17 the order?

18 MR. MORGAN: I'm going to object to  
19 the form.

20 A. I don't think that was the only reason we went  
21 to an assessment center was because the order  
22 said that you had to use an assessment center  
23 for a promotional process.



1 Q. You're saying y'all weren't doing an assessment  
2 center because the order said you had to do it?

3 MR. MORGAN: Object to the form.

4 A. Not in my understanding.

5 Q. Again, was it your understanding that the City  
6 had to comply with the 1991 order for the  
7 battalion chief promotion in 2006?

8 MR. MORGAN: Object to the form.

9 A. I'm not sure what the position was from the  
10 City's standpoint of whether we had to comply  
11 with the '91 order.

12 Q. You don't know one way or the other; is that  
13 correct?

14 A. Yes. I don't have that knowledge.

15 Q. Did you ever have any meetings about the 1991  
16 order and whether or not it was still in force  
17 with the city attorney, Arnold Umbach?

18 A. No. I don't recall having any meetings with  
19 Attorney Umbach.

20 Q. Do you recall the 1991 order being the subject  
21 of any discussions that y'all had when you were  
22 deciding about the battalion chief promotion  
23 maybe from Steve Reeves?

1 A. There may have been some discussion about there  
2 is this order and it has -- I believe in  
3 captains -- assessment centers. There may have  
4 been some discussions on that, yes.

5 Q. From your standpoint am I correct in saying that  
6 the City did not attempt to comply with the 1991  
7 order pursuant to the battalion chief promotions  
8 in 2006?

9 MR. MORGAN: Object to the form.

10 A. I wouldn't say we attempted to not comply, no.

11 Q. You wouldn't say you -- Say that again. I  
12 wasn't sure what your answer was, if you don't  
13 mind.

14 Did the City attempt to comply with the  
15 1991 order for the 2006 battalion chief  
16 promotions?

17 MR. MORGAN: Object to the form.

18 A. Yeah. Yes, we attempted to comply with it.

19 Q. You did? And how did you do that?

20 A. If you assume that we had to do an assessment  
21 center for this promotion, then I guess we  
22 complied with the order.

23 Q. In Section 12 of the order, which we've marked

1 as Plaintiff's Exhibit 3 -- I'll show it to  
2 you -- if you would read the section for me,  
3 Section 12. I've highlighted it. I apologize  
4 for that.

5 A. (Witness complies.)

6 Q. Section 12, which is the section that deals with  
7 the assessment center and promotions, did you  
8 see anywhere in that section any reference to a  
9 test with a cutoff score?

10 MR. MORGAN: Object to the form.

11 A. No, sir.

12 Q. Is it your understanding that this order  
13 requires an assessment center or an assessment  
14 center that has a test with a cutoff score?

15 MR. MORGAN: Object to the form.

16 A. Well, I think I have an understanding of what an  
17 assessment center is.

18 Q. Okay.

19 A. And --

20 Q. You'll agree with me that Section 12 does not --

21 MR. MORGAN: Let him answer the  
22 question.

23 Q. I'm sorry.

1 A. I think I have an understanding of what an  
2 assessment center is, and there are various  
3 components in an assessment center.

4 Q. You'll agree with me that this document does not  
5 reference in any way a cutoff score either as a  
6 prerequisite or as a component of the assessment  
7 center that's been approved by this court; is  
8 that correct?

9 MR. MORGAN: Object to the form.

10 A. That's right.

11 Q. In fact, an assessment center and a test with a  
12 cutoff score or any tests are two separate  
13 entities; is that correct?

14 MR. MORGAN: Object to the form.

15 A. I don't know that I would agree with that.

16 Q. You would not agree with that?

17 What we've marked earlier as Plaintiff's  
18 Exhibit 2, which is the Auburn Fire Division  
19 Orientation Manual, Promotional Written Test and  
20 Assessment Center Process, have you seen this  
21 document?

22 A. Yes.

23 Q. Have you looked at it and read it and understand

1           it?

2       A.    I remember looking at this document back when we  
3           started the process.

4       Q.    Will you agree with me that as described in that  
5           document, the test and the assessment center are  
6           two completely separate things?

7                       MR. MORGAN: Object to the form.

8       A.    I would have to read back through here and see  
9           how it's spelled out in this document here.

10      Q.    There's a section on page 9 that describes an  
11           assessment center.

12      A.    Okay.

13      Q.    And if you don't mind, I'll read it into the  
14           record and ask if that's what you understand an  
15           assessment center to be.

16                       An assessment center is an integrated  
17           system of simulations designed to elicit  
18           behavior similar to that required for success in  
19           a target job. More simply, it is a series of  
20           activities that are similar to those performed  
21           in a given job. Each activity mirrors a  
22           different aspect of the job. Performance in  
23           these activities is observed by assessors who

1 are trained to be fair and objective. The panel  
2 of objective assessors will be selected from  
3 departments similar to yours based upon their  
4 expertise and knowledge regarding the target  
5 job. The assessors will observe you performing  
6 a series of exercises in order to evaluate  
7 several job performance dimensions deemed  
8 important to performing successfully on the  
9 job. Assessors compare candidates' performance  
10 to predetermined performance guidelines to  
11 ascertain who will perform effectively on the  
12 job.

13 Is that consistent with your understanding  
14 of what an assessment center is?

15 MR. MORGAN: Object to the form.

16 A. I would say no.

17 Q. That's not consistent with your understanding?

18 A. Not my personal understanding of an assessment  
19 center, no.

20 Q. How is your personal understanding different  
21 than what I just read to you?

22 A. I think it included those components right  
23 there, but also a part of that would be an

1 examination.

2 Q. You understand that the examination is part of  
3 the assessment center; is that correct?

4 A. Yes.

5 Q. And where did you gain that information?

6 A. That's just my personal belief. I don't know  
7 that I've read or -- I can't point to a specific  
8 document that says this is why I believe that.  
9 I just believe that an assessment center would  
10 be evaluating a wide ...

11 Q. If you assume that what I just read you is  
12 correct and that that is a correct description  
13 of an assessment center, you would agree with me  
14 that a written test is not a part of it,  
15 correct?

16 MR. MORGAN: Object to the form.

17 A. Based on that definition.

18 Q. Based on that definition your answer is "yes"?

19 MR. MORGAN: Object to the form.

20 A. Yes.

21 Q. And, in fact, the test with the cutoff score  
22 that was given to the battalion chief applicants  
23 in 2006 was a prerequisite before you could

1 actually go to the assessment center; is that  
2 correct?

3 MR. MORGAN: Object to the form.

4 A. Yes. You had to pass the test before you went  
5 to the next step in the process, yes.

6 Q. According to the document that y'all used for  
7 the assessment center, the assessment center as  
8 I just read to you which was implemented by the  
9 City of Auburn doesn't include a test, does it?

10 MR. MORGAN: Object to the form of  
11 that question.

12 Q. What I just read to you --

13 A. Out of that definition, it did not say anything  
14 about a test.

15 MR. MORGAN: Object to the form.

16 Q. Well, this is the company y'all were using to do  
17 the assessment center, correct?

18 A. Right.

19 Q. Is there any reason why you would disagree with  
20 the company y'all had hired to do the assessment  
21 center?

22 A. No. But the test was a part of the process.

23 Q. The test was a prerequisite --



1 A. The assessment process.

2 Q. You'll agree with me if you didn't pass the  
3 test, you didn't go to the assessment center,  
4 did you?

5 MR. MORGAN: Object to the form.

6 Asked --

7 A. You didn't move further along the process, that  
8 is correct.

9 Q. The document speaks for itself, and I'll submit  
10 that the document clearly shows the test and the  
11 assessment center are two separate entities.  
12 Okay?

13 MR. MORGAN: If that's a question, I  
14 object to the form.

15 Q. Was the assessment -- I think you testified  
16 earlier that in doing an assessment center or  
17 attempting to do an assessment center for the  
18 battalion chief promotion in 2006 that you felt  
19 like the City was trying to comply with the 1991  
20 court order; is that correct?

21 A. Yes.

22 Q. Do you know whether or not the 2006 assessment  
23 center used for the battalion chief promotion

1 had been approved by the United States District  
2 Court for the Middle District of Alabama Eastern  
3 Division?

4 A. I have no knowledge of that.

5 Q. You don't know one way or the other?

6 A. Right. Correct.

7 Q. Will you agree with me that in the paragraph we  
8 just read in Section 12 it says that the City at  
9 that time submitted to the court an assessment  
10 center which shall be approved by the court? Do  
11 you agree with that?

12 MR. MORGAN: Object to the form.

13 A. That's what it says. I wasn't here at that  
14 time.

15 Q. And you don't know one way or the other if this  
16 assessment center for the 2006 BC promotion was  
17 approved by the court or not, correct?

18 A. No, sir.

19 Q. Are you familiar with Kathleen Robinson?

20 A. No, I'm not.

21 Q. Will you agree with me, Mr. James, that if, in  
22 fact, the City required a cutoff test before you  
23 could go to the assessment center that that

1 would violate the 1991 order that we just read?

2 MR. MORGAN: Object to the form.

3 A. Would I agree that it would violate it?

4 Q. That it would violate it.

5 MR. MORGAN: First of all, that's a  
6 legal question. But if you've got  
7 an opinion --

8 A. My opinion is no.

9 Q. In your opinion it would not violate the order?

10 A. Correct.

11 Q. And why is that your opinion?

12 MR. MORGAN: Object to the form.

13 A. Because it doesn't say anything about not having  
14 a test.

15 Q. Your testimony is that because the order doesn't  
16 mention a test, then it doesn't violate the --  
17 giving a test doesn't violate the order?

18 MR. MORGAN: Object to the form.

19 A. Correct. Based on my -- what my opinion is of  
20 an assessment center.

21 Q. Did you hear testimony earlier from Mr. Reeves  
22 about the number of black firefighters hired --  
23 firemen hired since the 1991 order?

1 A. Yes, sir.

2 Q. And you've been there all that time, maybe not  
3 in the same position --

4 A. Correct.

5 Q. -- but did you hear when I said that -- when I  
6 named four black firefighters that were hired  
7 since that time?

8 A. I heard you mention that, yes.

9 Q. Do you know of any other black firemen that were  
10 hired since that time by the City of Auburn Fire  
11 Department?

12 A. No, sir.

13 Q. You heard Mr. Reeves give a rough estimate that  
14 20 white people had been hired or white firemen  
15 had been hired since 1991. Do you agree with  
16 that estimate?

17 A. To be honest, I couldn't say if that was ten  
18 over or ten -- I don't know. I don't have a  
19 feel for whether that's even close.

20 (Plaintiff's Exhibit 13 marked for  
21 identification.)

22 Q. I'll show you what I've marked as Plaintiff's  
23 Exhibit 13. These are unsigned answers to

1           interrogatories that I submitted to the City and  
2           your attorney. I'm going to show them to you  
3           and just ask if you've ever seen them before.

4           MR. MORGAN: Richard, I have the  
5           signed responses. And I will send  
6           those to you, and I will show him  
7           his signed responses --

8           MR. HORSLEY: Okay.

9           MR. MORGAN: -- if that's okay.

10          MR. HORSLEY: That's fine.

11          MR. MORGAN: We can make a copy of it  
12          if you want to.

13          MR. HORSLEY: It doesn't matter. As  
14          long as they are the same, it  
15          doesn't matter.

16          MR. MORGAN: I don't think we made  
17          any changes.

18          MR. HORSLEY: If you'll send me the  
19          signed copies, I don't care if  
20          those are not attached to the  
21          deposition.

22          MR. MORGAN: The unsigned responses I  
23          sent you have not been changed. I

1                   have the signed ones, and I'll  
2                   send them to you.

3                   MR. HORSLEY: So for the record, the  
4                   interrogatory responses we're  
5                   attaching as exhibits to this  
6                   deposition are exactly the same as  
7                   the interrogatory responses that  
8                   have been signed under oath by  
9                   each individual --

10                  MR. MORGAN: That's my understanding.

11       Q.       Do you recall signing your answers to  
12               interrogatories?

13       A.       Yes, sir.

14       Q.       And this is an accurate copy of your answers; is  
15               that correct?

16       A.       Yes, sir.

17       Q.       And these answers are correct and answers given  
18               to the best of your knowledge, correct?

19       A.       Yes, sir.

20                       (Plaintiff's Exhibit 14 marked for  
21                       identification.)

22       Q.       I'll show you what I've marked -- Let me do this  
23               first. Just so I can go ahead and get these

1 attached, these are the City of Auburn's  
2 responses to my interrogatories marked as  
3 Plaintiff's Exhibit 14. Have you seen those?

4 MR. MORGAN: I'll make the same  
5 representation to you.

6 MR. HORSLEY: Who is going to sign or  
7 who signed those?

8 MR. MORGAN: I don't know who signed  
9 for the City.

10 (Off-the-record discussion.)

11 MR. MORGAN: The city manager, yeah.

12 MR. HORSLEY: Who is that?

13 MR. MORGAN: Charles Duggan.

14 MR. HORSLEY: So Plaintiff's Exhibit  
15 14 is the City's responses, and  
16 those were signed without change  
17 by Charles Duggan, the city  
18 manager, correct?

19 (Plaintiff's Exhibit 15 marked for  
20 identification.)

21 Q. What I've marked as Plaintiff's Exhibit 15 is a  
22 letter sent to you back on May 12, 2006 from  
23 Horace Clanton, Eddie Ogletree, and Gerald

1 Stephens, and I'll ask you if you've ever seen  
2 that document.

3 A. Yes, sir.

4 Q. You have seen this?

5 A. Yes.

6 Q. You received it?

7 Had you had any discussions with  
8 Mr. Ogletree or Mr. Stephens about this  
9 grievance before they sent you this letter?

10 A. I don't recall having any discussions, no.

11 Q. As a result of this letter, do you recall having  
12 a meeting with Mr. Stephens and Mr. Ogletree?

13 A. No, I don't recall having a meeting.

14 Q. Have you ever had a face-to-face meeting with  
15 these gentlemen specifically related to their  
16 complaints in Plaintiff's Exhibit 15?

17 A. Not that I recall.

18 (Plaintiff's Exhibit 16 marked for  
19 identification.)

20 Q. What I'll mark as Plaintiff's Exhibit 16 is a  
21 letter that I believe you sent to Lieutenant  
22 Stephens. If you could, identify that for me.

23 A. Yes, I recall this.



1 Q. Was that letter sent to Lieutenant Stephens in  
2 response to Plaintiff's Exhibit 15?

3 A. Let me see it again.

4 (Brief off-the-record discussion.)

5 A. Yeah. It appears to be what I would have  
6 responded to.

7 Q. Did you send the exact same letter to your  
8 knowledge to Eddie Ogletree?

9 A. Yeah. My recollection I would have, yes.

10 Q. In your second to last sentence in the second  
11 paragraph, you state that an accumulative system  
12 is being evaluated in the overall scope of the  
13 promotional process. They hope to have this  
14 completed by the end of this fiscal year.

15 What did you mean by those two sentences?

16 A. A Career Development Plan that the fire division  
17 is working on.

18 Q. Did you mean by that that the Auburn Fire  
19 Department was looking into an accumulative  
20 system for promotions?

21 A. Yes.

22 Q. Meaning --

23 A. As part of the Career Development Plan for each

1 rank.

2 Q. I'm sorry. What?

3 A. Promotion for each rank, for each position.

4 Q. And what specifically do you mean when you say  
5 accumulative?

6 A. Well, the Career Development Plan, as I  
7 understand it, each position would have certain  
8 requirements in that position, certain  
9 certifications, educational requirements. And  
10 then to go to the next -- or be eligible for a  
11 promotion to a higher rank, that you would meet  
12 those qualifications.

13 Q. Does a cutoff test also -- is that also included  
14 in those qualifications?

15 A. The document I recall does not mention a cutoff  
16 test.

17 Q. So were you saying in this letter that the City  
18 was looking into promoting people based on  
19 something different than tests with cutoff  
20 scores?

21 MR. MORGAN: Object to the form.

22 A. Well, as I recall this, it was the Career  
23 Development Plan, CDP, that the fire division

1 was working on.

2 Q. Do you recall during the meetings with CHW -- if  
3 I say that wrong -- CWH -- do you recall who  
4 during those meetings was promoting a score of  
5 70 as being the cutoff score?

6 A. I don't recall any specific person promoting  
7 that other than it was discussed among everybody  
8 that was in the room about a cutoff score.

9 Q. And you can't testify if anyone with the City of  
10 Auburn was the first person to suggest that  
11 there be a 70 cutoff score?

12 A. I couldn't identify a person, no.

13 Q. Are you familiar through your job with the City  
14 of Auburn with the work history of Mr. Stephens  
15 and Mr. Ogletree? It's okay if you're not. I'm  
16 just asking.

17 A. Detailed parts of it, not specifically, other  
18 than I did -- since my position as the director  
19 looking at performance appraisals.

20 Q. To your knowledge did they have satisfactory  
21 performance appraisals?

22 A. As I recall they do, yes.

23 Q. Are you aware of anything in their work history

1 with the City of Auburn that would have  
2 disqualified them for the promotion to battalion  
3 chief?

4 MR. MORGAN: Object to the form.

5 A. No.

6 Q. You talked about the promotional process a  
7 moment ago, and you'll agree with me that the  
8 test with a cutoff score was a component of the  
9 process to be promoted to battalion chief in  
10 2006; is that correct?

11 A. Correct.

12 Q. And what other components of that process  
13 existed to your knowledge for the promotion?

14 A. They had the thing they called the hot seat.  
15 They had a situational scenario. It seems there  
16 was another component, but I can't remember what  
17 it was. It seems like there were three  
18 components.

19 Q. Is it your understanding that an applicant's  
20 performance in the situational part of the  
21 process, that their performance was largely  
22 based on their experience as firefighters?

23 MR. MORGAN: Object to the form.

1 A. To be honest I don't know that I could answer  
2 that. I'm not sure. I'm not a firefighter so  
3 I'm not sure.

4 Q. You'll agree with me that all three  
5 African-Americans that applied for battalion  
6 chief failed to make it past the first step of  
7 the requirements; is that correct?

8 A. That's true.

9 Q. And that being -- the first step was a test with  
10 a cutoff score of 70, correct?

11 A. That's true.

12 Q. Will you also agree with me that the three  
13 African-Americans that failed to make it past  
14 the first step of the promotion process had been  
15 with the City of Auburn Fire Department for more  
16 years than the four individuals that were  
17 actually promoted to battalion chief?

18 A. To my recollection I'd say that's correct.

19 Q. Would you agree that since they had been there a  
20 number of years more than the individuals who  
21 were actually promoted to battalion chief that  
22 they had more actual on-the-job experience than  
23 those individuals?

1 MR. MORGAN: Object to the form.

2 A. I could agree that they had been a firefighter  
3 longer. I'm not sure how you define experience.

4 Q. I'm not going to offer this exhibit during your  
5 deposition, but have you seen the two memos that  
6 were sent out back to back in advance of the  
7 promotion where one said that only  
8 nonprobationary lieutenants could apply and then  
9 several days later a second one that said  
10 everybody can apply: nonprobationary,  
11 probationary, and probationary, nonprobationary  
12 firefighters could apply also? Did you see  
13 those two memos?

14 A. Yes.

15 Q. Were you involved in the decision to allow  
16 nonprobationary lieutenants and probationary and  
17 nonprobationary --

18 Were you involved in the decision to allow  
19 probationary lieutenants and nonprobationary and  
20 probationary firefighters to apply for the  
21 battalion chief position?

22 A. Yes. I made -- Yes.

23 Q. Was that a group decision or did you make that

1 decision yourself?

2 A. I did not see anything in our policy or job  
3 description that would have excluded the  
4 individuals other than lieutenants, and I made  
5 that point and then the second memo was sent  
6 out.

7 Q. So you saw the first memo. And for some reason  
8 that triggered you to go --

9 A. No. Actually, the first memo went out as I  
10 recall. And then, if I'm not mistaken, I  
11 believe we got an application from Mr. Turner.  
12 When I got that or when I heard that, I looked  
13 and did not find anything that would preclude  
14 him from applying for the job.

15 Q. So it's your testimony that as a result of  
16 his -- Mr. Turner's application, you went and  
17 looked at the policies and determined that there  
18 was nothing that would preclude him from  
19 applying for the battalion chief position,  
20 correct?

21 A. As I recall, yes.

22 Q. And so based upon that, you decided to allow  
23 probationary lieutenants, probationary and

1 nonprobationary firefighters all to apply for  
2 that position; is that correct?

3 A. Yes, sir.

4 Q. Is it your position that the lieutenants who had  
5 been reclassified in February of '06 were  
6 probationary or nonprobationary lieutenants at  
7 the time of the battalion chief promotion?

8 A. Non.

9 Q. Why is that?

10 A. Because they weren't promoted.

11 Q. Mr. Reeves wasn't real familiar with the  
12 insignia that different ranking firemen wear.  
13 Are you familiar with those insignia?

14 A. I am not.

15 Q. Do you recall a meeting with Lieutenant Stephens  
16 sometime in 2005 which would have been before  
17 the reclassification of team leaders to  
18 lieutenant?

19 A. A meeting before that?

20 Q. Uh-huh (positive response).

21 A. I don't recall that we had a meeting before  
22 that.

23 Q. You don't recall the meeting you had with



1 Mr. Stephens where he told you that there was a  
2 problem --

3 A. I believe we may have met after that meeting --  
4 at some point after that meeting.

5 Q. At some point after the reclassification?

6 A. No. After a meeting that we had with the three  
7 individuals that did not agree with the  
8 reclassification.

9 Q. You're saying you and Mr. Stephens had a meeting  
10 after that meeting?

11 A. As I recall it was after that meeting.

12 Q. Can you tell us approximately when this meeting  
13 occurred?

14 A. It may have been the same day. It could have  
15 been the next day. I think it was shortly after  
16 that.

17 Q. Tell me what you recall was said during that  
18 meeting. It's just you and Mr. Stephens?

19 A. I believe we went to my office. To be quite  
20 honest, I don't recall any details about the  
21 meeting. I don't recall anything -- I can only  
22 assume that there wasn't anything earth  
23 shattering, but I don't recall what we said or

1           what he said.

2       Q.    It's your testimony you don't recall  
3           specifically what was said during that meeting?

4       A.    No.  I recall -- I believe we met in my office,  
5           but I don't recall any specifics about it, no.

6                   MR. HORSLEY:  Let's take a few  
7                   minutes.

8                   (Brief recess.)

9                   (Deposition concluded at  
10                  approximately 2:10 p.m.)

11                  \* \* \* \* \*

12                  FURTHER DEPONENT SAITH NOT

13                  \* \* \* \* \*

14                               REPORTER'S CERTIFICATE

15       STATE OF ALABAMA:

16       MONTGOMERY COUNTY:

17                   I, Pamela A. Wilbanks, CCR, Registered  
18       Professional Reporter, and Commissioner for the State  
19       of Alabama at Large, do hereby certify that I reported  
20       the deposition of:

21                               WILLIAM HOWARD JAMES

22       who was first duly sworn by me to speak the truth, the  
23       whole truth and nothing but the truth, in the matter

1 of:

2 EDDIE OGLETREE, an individual,

3 GERALD STEPHENS, an

4 individual,

5 Plaintiffs,

6 Vs.

7 CITY OF AUBURN, a municipality

8 in the State of Alabama, LARRY

9 LANGLEY, an individual, LEE LAMAR,

10 an individual, BILL HAM, JR., an

11 individual, STEVEN A. REEVES, an

12 individual, BILL JAMES, an

13 individual, CHARLES M. DUGGAN, an

14 individual, and CORTEZ LAWRENCE,

15 an individual,

16 Defendants.

17 In The U.S. District Court

18 For the Middle District of Alabama

19 Eastern Division

20 3:07-CV-867-WKW

21 on Wednesday, July 30, 2008.

22 The foregoing 37 computer printed pages

23 contain a true and correct transcript of the

COPY

1 examination of said witness by counsel for the parties  
2 set out herein. The reading and signing of same is  
3 hereby not waived.

4 I further certify that I am neither of kin nor  
5 of counsel to the parties to said cause nor in any  
6 manner interested in the results thereof.

7 This 5th day of August 2008.

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Pamela A. Wilbanks, ACCR #334  
Expiration Date: 9-30-2008  
Registered Professional Reporter  
and Commissioner for the State  
of Alabama at Large